

**A WASHINGTON, DC-BASED
BUREAUCRATIC INVENTION
WITH POTENTIAL WATER
CONSERVATION AND PROP-
ERTY RIGHTS IMPACTS: THE
NATIONAL BLUEWAYS ORDER**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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**OVERSIGHT HEARING ON A WASHINGTON,
DC-BASED BUREAUCRATIC INVENTION
WITH POTENTIAL WATER CONSERVATION
AND PROPERTY RIGHTS IMPACTS: THE
NATIONAL BLUEWAYS ORDER**

**Wednesday, July 17, 2013
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, DC**

The subcommittee met, pursuant to notice, at 2 p.m., in room 1334, Longworth House Office Building, Hon. Tom McClintock [Chairman of the subcommittee] presiding.

Present: Representatives McClintock, Lummis, Tipton, Gosar, Napolitano, and Huffman.

Also Present: Representatives Smith of Missouri, and Crawford.

Mr. MCCLINTOCK. The subcommittee will come to order. Before we begin with statements from Members and witnesses, I would ask unanimous consent that Mr. Smith of Missouri and Mr. Crawford of Arkansas be allowed to sit with the subcommittee and participate in today's hearing.

[No response.]

Mr. MCCLINTOCK. Hearing no objection, so ordered.

We will begin with 5-minute opening statements.

STATEMENT OF THE HON. TOM MCCLINTOCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCCLINTOCK. Today, the Subcommittee on Water and Power meets to take testimony on the administration's so-called "National Blueways Order," and to hear from communities that have been impacted by this order.

The National Blueways Order appears to have originated through a leftist environmental organization called "American Rivers," whose CEO at the time, Rebecca Wodder, is now Senior Advisor to the Department of the Interior, spearheading this drive. Ms. Wodder was invited to appear before the subcommittee but has declined to do so.

In a nutshell, the National Blueways Order was never authorized by Congress, but simply imposed by administrative fiat in May of last year through Secretarial Order 3321. Although the Department cites broad general authority under three Federal acts, as we shall hear, these claims are dubious and yet to be tested in court.

This sweeping order, whose stated intention is to impose Federal designations on waterways that it describes as "a headwaters-to-mouth approach to rivers management," is asserting authority that Congress has hitherto reserved to itself through the Wild and Scenic Rivers Act. The Secretarial Order allows "any established

stakeholder partnership”—which would include distant environmental advocacy groups—to nominate a river and for the Department then to impose the designation. As we shall hear, the implications of this designation can be economically devastating to local economies.

For example, in January of this year, the Department announced the designation of the White River watershed as a Blueway, a 17.8 million-acre drainage area spanning 60 counties and 722 miles of mainstem river in southern Missouri and northern Arkansas. As we shall hear, it did so with no public testimony and despite widespread local opposition. Less than 2 weeks ago, the Department was forced to abandon this plan in the face of rapidly mounting local and congressional opposition.

Although the order speaks of coordination and consultation, we have learned that there is none. Indeed, in April, this subcommittee heard testimony from a Wyoming conservation director about the process he had witnessed in his own region. He asked, “How can a designation that requires no public notice, no comment opportunity, and was created without coordination or consultation with affected landowners, local governments or States, result in increased coordination?”

The implications of this overreach are breathtaking. As a recent letter signed by 79 environmental advocacy groups says, “With 3.5 million miles of rivers across the country, we have only scratched the surface when it comes to establishing Blueways. There is tremendous potential to expand existing trails and create new ones.”

Now, to those who suggest that these orders are a precursor to enhancement of recreational opportunities along these waterways, I invite them to look toward Yosemite National Park in my district, where the administration is seeking to expel long standing recreational services from the Yosemite Valley, including bicycle and raft rentals, horseback riding, and many other commercial amenities.

This subcommittee has repeatedly invited Ms. Wodder to testify about this sweeping “headwaters to mouth” National Blueways Order and continues to seek answers to many questions, including the legal authority for this order; the process by which the designation is imposed; the regulatory implications of designation; and the due process afforded by all those who are directly impacted by it. To date, this subcommittee has been met by silence.

Earlier today, in response to rapidly building public opposition, the new Secretary of the Interior offhandedly announced she is calling a pause to the Bluewaters order, “until we figure out the future of the program.” Well, the subcommittee welcomes this announcement. But the question occurs, does this mean a pause until the heat dies down, or does it mean a genuine intention to step back from a legally suspect, economically damaging, and politically unpopular initiative? That is one of the questions I would have liked to have asked Ms. Wodder.

The Congress and the American people are entitled to forthright answers from this administration, not stonewalling. This is particularly urgent in light of the avowed intention by the program’s supporters to turn their sights on all 3.5 million miles of American streams and rivers. But we can at least shine a light on this prac-

tice by affording those citizens and taxpayers who have been directly affected by it to have a say in the decisionmaking process, and we do so today.

The prepared statement of Mr. McClintock follows:]

PREPARED STATEMENT OF THE HONORABLE TOM MCCLINTOCK, CHAIRMAN,
SUBCOMMITTEE ON WATER AND POWER

Today, the Water and Power Subcommittee meets to take testimony on the administration's so-called "National Blueways Order," and to hear from communities that have been impacted by this order.

The National Blueways Order appears to have originated through a leftist environmental organization called "American Rivers," whose CEO at the time, Rebecca Wodder, is now Senior Advisor to the Department of the Interior spearheading this drive. Ms. Wodder was invited to appear before the subcommittee but has declined to do so.

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The Secretarial Order allows "any established stakeholder partnership"—which would include distant environmental advocacy groups—to nominate a river and for the Department then to impose the designation.

As we shall hear, the implications of this designation can be economically devastating to local economies.

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As we shall hear, it did so with no public testimony and despite widespread local opposition. Less than 2 weeks ago, the Department was forced to abandon this plan in the face of rapidly mounting local and congressional opposition.

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The Congress and the American People are entitled to forthright answers from this administration, not stonewalling. This is particularly urgent in light of the avowed intention by the programs supporters to turn their sights on all 3.5 million miles of American streams and rivers.

But we can at least shine a light on this practice by those citizens and taxpayers who have been directly affected by it, as we do today.

Mr. MCCLINTOCK. I yield back the balance of my time, and recognize the Ranking Member for 5 minutes.

STATEMENT OF THE HON. GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And today's hearing focuses on the Secretarial Order that created the National Blueways program. The intent of the program should be one that both Democrats and Republicans and others should support: a more coordinated effort by Federal agencies to support the actions of localities in the watershed. Yet today we are here to criticize the program that is voluntary. It is discretionary and, essentially, a designation only in name.

I agree with the Majority there are questions about the program that need to be addressed, and I am especially interested in the role that public input and participation has played in the designations. I am disappointed the Department chose not to testify at today's hearing. However, I believe Secretary Jewell's comments today at an earlier morning committee hearing, her commitment to delve into the details of the program before additional designations are made should help alleviate concerns from the other side of the aisle. Her decision to rescind the White River designation is also an indication the Department is taking a hard look at the program. There are very real concerns about the program, which we will hear from our witnesses today.

And the committee is also taking this issue on the road with a field hearing in Rep. Smith of Missouri's district in 2 weeks. Yet there are also very real concerns across the country, due to drought. As of last week, nearly half the country is experiencing moderate to exceptional drought. Drought record and record-high temps have led to extremely dry conditions, creating fodder for the wilderness fires scorching—the wildfires also scorching the Southwest and the West.

As the authorizing committee, we have the ability to hear legislation like the Drought Relief Act. The Drought Relief Act is a widely supported program that would provide the Bureau of Reclamation with tools to help our communities in time of drought. Yet, despite being introduced at the beginning of Congress, and the authorization having expired last year, it is yet to have a hearing. There are also several tribal water rights settlements like the Black Feet settlement in Montana, that are waiting introduction and subsequent committee consideration. There is also legislation like the Desalination Act that has had a hearing and is waiting a mark-up. Mr. Chairman, I hope we can work together to consider these issues and subsequent legislation in the near future.

I thank our witnesses, and also would like to introduce into the record the current drought map, which shows central—experiencing high amounts of drought. And also, for the record, letters of support from—Connecticut River designation from David Bingham, private citizen; Frederick Gahan, private citizen; Dannel Malloy, Governor of Connecticut. As the committee may know, citizens in New England have long fought for private property rights, dating back to the original Tea Party of 1773. I submit for the

record letters of support from local governments, including the city of Augusta in Woodruff County, and the city of Clarendon in Monroe County.

Testimony received today also stated there were no local governments in support of either the Connecticut or the White River designations. Yet I am introducing this into the record to show that this is the correct support from those areas.

Mr. MCCLINTOCK. Without objection.

Mrs. NAPOLITANO. And I yield back.

[The prepared statement of Mrs. Napolitano follows:]

PREPARED STATEMENT OF THE HONORABLE GRACE F. NAPOLITANO, RANKING
MEMBER, SUBCOMMITTEE ON WATER AND POWER

Today's hearing focuses on the Secretarial Order that created the National Blueways Program. The intent of the program should be one that Democrats and Republicans support: a more coordinated effort by the Federal agencies to support the actions of the localities in the watershed. Yet here we are today to criticize a program that is voluntary, discretionary, and essentially, a designation only in name.

I agree with the Majority that there are many questions about this program that need to be addressed. I am especially interested in the role that public input and participation has played in the designations. I am also disappointed that Department chose not to testify at today's hearing. However, I believe that Secretary's Jewell's comments earlier this morning, and her commitment to delve into the details of this program before additional designations are made, should help alleviate concerns from the other side of the aisle. Her decision to rescind the White River designation is also an indication that the Department is taking a hard look at this program.

There are very real concerns about this program, which we will hear about from our witnesses today. The committee is also taking this issue on the road with a field hearing in Rep. Smith of Missouri's district in 2 weeks.

Yet Mr. Chairman, there are also very *real* concerns across this country due to drought. As of last week, nearly half the country is experiencing moderate to exceptional drought. The drought and record high temps have led to extremely dry conditions, creating fodder for the wildfires scorching the west. As the authorizing committee, we have the ability to hear legislation, like the Drought Relief Act. The Drought Relief Act is a widely supported program that would provide the Bureau of Reclamation with tools to help our communities in a time of drought. Yet despite being introduced since the beginning of Congress, and the authorization having expired last year, it has yet to have a hearing.

There are also several tribal water rights settlements, like the Blackfeet Settlement in Montana, that are awaiting introduction and subsequent committee consideration. There is also legislation, like the Desalination Act that has had a hearing and is awaiting a markup. Mr. Chairman I hope we can work together to consider these issues and subsequent legislation in the near future. Thank you for our witnesses for being hearing today. I look forward to hearing your testimony.

Mr. MCCLINTOCK. The Chair recognizes Mrs. Lummis of Wyoming for 5 minutes.

STATEMENT OF THE HON. CYNTHIA M. LUMMIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. LUMMIS. Thank you, Mr. Chairman, for holding this hearing. Wyoming's conservation districts, county commissioners, State legislators, and other citizens are concerned about the National Blueways program, and rightly so. Five or 6 months ago, none of us really knew what a Blueway was. But thanks to Wyoming's neighbors in Montana, we learned that Interior official Rebecca Wodder was actively pushing for a designation of the Yellowstone River watershed. That is 22 million acres in Wyoming being tar-

geted for a mysterious new Federal designation. Yet the Department of the Interior did not engage a single Wyoming official or water user, not a one.

So, we did our homework. And what we found is not encouraging. We have learned that a Blueway designation could potentially undermine private property rights, State primacy over water law, and local conservation efforts. We have learned that a Blueways designation can occur with no formal public process or opportunity for public comment. All it takes is the swipe of a pen.

Today we have an opportunity to explore another dimension of this controversial order. Under what authority does the Department of the Interior believe it can designate and manage millions of acres of private, State, and Federal land? This program, having been concocted by the Department of the Interior, the Congress has an opportunity and responsibility to examine whether they have the legal authority to do so.

Mr. Chairman, I am pleased to welcome Karen Budd-Falen of Cheyenne, Wyoming, who will help us unravel that very question. Ms. Budd-Falen is a renowned private property and western water rights lawyer. Her legal representation is a tremendous asset to Wyoming citizens whose livelihoods are affected by the decisions of Federal agencies and the environmental litigation that all too often follows. In addition to her legal practice, she has generated an impressive amount of policy literature. I want to commend her for her recent work to expose the abuse of the legal system by radical environmental organizations, in many cases at taxpayer expense, under attorney fee-shifting statutes.

Coincidentally, she has identified a potential litigation problem with the National Blueways program, something I hope we can explore today. I also look forward to her insight on the legal basis, or lack thereof, for the National Blueways program.

Ms. Budd-Falen has appeared before Congress and this committee several times over the years. We are fortunate to have the benefit of her expertise.

With that, thank you, Ms. Budd-Falen, for coming to testify, and thank you, Mr. Chairman, for holding this hearing and paying much deserved attention to this important issue. I yield back.

Mr. McCLINTOCK. Thank you.

The Chair now recognizes Mr. Smith of Missouri for 5 minutes.

STATEMENT OF THE HON. JASON T. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. SMITH. Thank you, Mr. Chairman, for having us. And thank you for hosting the committee. Before I make my remarks, I would first like to thank the witnesses for taking their time in traveling to Washington today to testify, including my good friend, Mr. Eddy Justice.

Eddy hails from Poplar Bluff, a city in my district, that would have been included in the White River National Blueway. In addition to being a friend, Eddy uses the river for boating and camping frequently, and is an active member of the Poplar Bluff civic community, has some unique insight into how his community and surrounding communities in Missouri were not included in the designation process at all.

The process for designating these national Blueways has not always been voluntary, open, or public. And I commend these witnesses for being willing to discuss the Blueways issues today in an open forum. In much the same way, I am disturbed by the refusal of Ms. Rebecca Wodder to testify today.

Though this program is trumpeted as voluntary, open, and public, Ms. Wodder does not appear to be interested in making voluntary, open, and public comments at all.

First, let me provide a little background about the district that I represent. Missouri's eighth congressional district contains 30 counties in southeast and southern Missouri. It starts 40 miles south of St. Louis, goes down the mighty Mississippi, including the Bootheel Region, to about 40 miles east of Springfield, Missouri, to the very northwest corner of Rolla.

My district is agriculturally diverse, growing everything but citrus and sugar. Importantly, for the purpose of this hearing, 14 of the 30 counties in my district contain land that would have been within the White River National Blueway designation. In addition, our district includes the Ozark National Scenic Riverways, a National Park Service entity that spans through five counties on the western side of my district, including my home county of Salem.

The parts of our local economy that are not driven by agriculture rely heavily on tourism and natural resources. Folks come from all over the State and around the country to be guided on float trips on the rivers and streams contained in my district. We have a thriving timber industry that produces lumber, charcoal, and finished wood products, and some of the district's largest employers mine lead and smelt aluminum.

What is the common thread that ties together the components of agriculture, tourism, and natural resources in my district? Property rights and our ability to use the land, and its bounty, to make a living. All too often, the Federal Government tugs at this thread, threatening to unwind the fabric of our economy. Whether it is new regulations restricting farm labor, new EPA carbon emission rules that would shutter our largest employers, or shutting down access and restricting the use of our rivers and streams, my district is under attack.

My constituents and I are tired of unelected Washington, DC bureaucrats creating new programs out of thin air that have the ability to end our way of life and the way that we make a living. While the White River National Blueways has been withdrawn, it is only the latest symptom of a disease that has embedded itself into the very core of this administration. They think that they know better than locals, and they think they can act on their own without congressional approval or oversight. Where does it stop?

I challenge the members of this committee today to make it our goal not only to stop the National Blueways system all over the country, but also to fight the disease that has spawned.

Local groups and individuals are often the best situated to manage their lands and resources. We don't need bureaucrats, mandates sent from them on high that may have drastic repercussions for our local communities.

Thank you, Mr. Chairman.

Mr. McCLINTOCK. Thank you. The Chair next recognizes the gentleman from Arkansas, Mr. Crawford, for 5 minutes.

STATEMENT OF THE HON. ERIC A. "RICK" CRAWFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. CRAWFORD. I thank the Chairman and appreciate your latitude here today. Thank you for holding this hearing. And I would like to welcome Judge Robert Griffin, and thank him for coming here today to testify.

Judge Griffin led the efforts to oppose the Blueway designation in Arkansas' Independence County. I am very happy that he has agreed to come here today to share with us his experience with how this designation was handed down from Washington with little input from or notice to the people it would affect most.

I also would request unanimous consent to submit for the record the resolutions from several of the counties in my State, including one from Judge Griffin's Independence County, which requested the Department of the Interior's rescission of this designation.

Mr. McCLINTOCK. Without objection.

Mr. CRAWFORD. I think it is critically important that we hear and understand why so many rejected this designation. And hopefully it will serve as a lesson for Washington bureaucrats that national pronouncements of local programs shouldn't be made without the input of those that they will most affect.

And with that, I yield back.

Mr. McCLINTOCK. The Chair notes that the bells have rung for attendance on the House Floor. But we should have at least another 10 minutes that we can comfortably continue to meet. So I will go ahead and begin with the public testimony.

Again, for all of our witnesses, as we outlined in the invitation letter, the rules allow 5 minutes per testimony. There will be a green light until the final minute, when a yellow light will go on, and a red light at the end of 5 minutes.

And with that, I am very pleased to recognize The Honorable Robert Griffin, an Independence County judge from Batesville, Arkansas, to testify.

STATEMENT OF THE HON. ROBERT T. GRIFFIN, JUDGE, INDEPENDENCE COUNTY, BATESVILLE, ARKANSAS

Judge GRIFFIN. Mr. Chairman, Ranking Member, honorable members, I welcome this opportunity to come before you to explain the grassroots effect of having an executive-driven initiative come downstream.

And first, I want to explain what a county judge is because it may be a foreign concept to this committee. I am more the county administrator. I do have a limited judicial role, but very limited. So, I am over the system of roads, I am over the administration, the legislation of the quorum court. And I choose to honor the separation of the government in our county. When I have the executive ability to do things, I do not do them, I would rather involve my quorum court and seek their input. So I am very much against executive-driven directives.

The White River bisects our county. The main concern I had—and, again, since my written testimony is for the record already—is to discuss the way that it is seen in their initiatives. In the nominating document, it does not recognize the White River having any significance, except limiting fish passage. That reservoir that is created by lock one, is a reservoir of water for 25,000 people. It is a reservoir for farmers to irrigate from. And it has much more significance—it feeds our industries that are located in Batesville, Arkansas, in the nearby proximity. So it has a much deeper impact than just the passage of fish. It has been there for 100-something years, impacting in that manner. Yet we have seen our county grow from the 1950s to double in population into the 2000s.

The partnerships that it implies—we fully support partnerships. We partner with the Game and Fish Commission on half a dozen projects in our county. Those are voluntary participations. If there is a project that we can try to do, then we work together. Also, NRCS, a national agency under the Department of Agriculture, we partner with them in various projects. In fact, we have two or three that we are working toward right now. But again, those are voluntary participations. That is where we identify a problem, we seek their help, we go through the permitting process, and we do the things that are necessary to help impact the lives of our citizens in Independence County.

Eighty percent of our property is privately owned. And we can only imagine what initiatives may be brought down when the Secretarial Declaration 3321 implies broad United States Code in being able to enact this partnership.

Something else that is much more troubling is the fact that they seek to solicit other partners and manage those partners. And that was done in a way that they have at least three solicitations for the nomination from local governmental—or quasi-governmental—agencies. The Mayor of Clarendon has a project that is being worked with the Corps on the Cache River. He was encouraged to write a letter of support in exchange for the hope of more funding for that project. The Mayor of Augusta, Arkansas, I spoke with him. Now, this is hearsay, because I spoke to him and I am relaying it to you. I talked to him. He has a U.S. Fish and Wildlife office that he trusts that agent very much, and he asked for his support, and he did. One of my local county judges is on a Cache River Coalition, a project that very desperately needs to be done. There is a log jam that has been there in existence probably 40 or 50 years that they now have been working toward moving it in a voluntary partnership with the Corps and other partners. He was encouraged on the promise of funding. But the truth is, the funding for all these projects is already there and was already there. But that is a perfect example of how they were solicited for their support, and managed to believe what it was saying.

Water is very important, not just to California, Ranking Member. I mean—and I know you are—I think Los Angeles County, you live in about a 100,000-population city—water is very important. Your city is out of water today if you were over in Maryland—100,000 people out of water of a 54-inch water main, 3 to 5 days they are going to be out of water. If you don't think water is important to them, and their access to that water, go talk to those people today.

They are not going to have a shower or water to drink in that length of time.

So, it has an impact, even to the public utility, in the aspect that the people need water.

The main problem is—and I am going to quote what I said—is found in Cool Hand Luke, when the captain explained to Luke, “What we have here is failure to communicate.”

This process was done, executive-driven, it come downstream to us, and we had to live with the result. Thankfully, it has been withdrawn at this time. We would hope to see the entire thing rescinded. And I think the suspicious wording is somewhat troubling.

Mr. Chairman, I thank you for this opportunity.

[The prepared statement of Judge Griffin follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT T. GRIFFIN, JUDGE,
INDEPENDENCE COUNTY, BATESVILLE, ARKANSAS

Chairman McClintock, Ranking Member Napolitano, and Honorable members of the subcommittee, I am Robert Griffin, County Judge and the Chief Elected Official of Independence County, Arkansas located in northeastern Arkansas and bisected by the White River of recent “National Blueway” fame through Department of the Interior Secretarial Order 3321. As a third generation farmer/landowner in the White River Watershed, my life has been devoted to agriculture along the many links to the White River in our county. As well, I am very familiar with the conservation programs provided by the USDA through the years. As owner and operator of a United States Federal Warehouse Act grain facility for 30 plus years, I dealt with the regulatory protection administered by the act and as well, dealt day to day with the farmers within the watershed. As a land owner, I have participated in several voluntary conservation programs of the USDA. I see the 80 years of historical evidence throughout our county of the conservation efforts brought forth by the dust bowl years beginning in 1933 beginning with the Soil Erosion Service. Our county is dotted with land terraced for protection of soil erosion in voluntary participation with the partnership of the Federal Government. As County Judge, I must be concerned with issues that impact the residents of Independence County and as well, part of my responsibilities is the maintenance of roads and the drainage from those lifelines of society goes directly into the watershed.

Independence County is the perfect place to examine the potential effects of the Blueway designation due to the fact the White River bisects our county. Independence County is at the “fall line” separating the Ozarks from the Mississippi Alluvial Plain, thereby splitting the fertile river bottom soil and the beginning of the mountains. We split evenly between forest at 49 percent and cropland/pastures at 50 percent with 1 percent surface water. This makes us a kindred spirit with the Western States of Washington, Idaho and Oregon that share the same balance of forest and crop/pasture/rangeland uses. In fact, the entire acreage within the White River Watershed is comprised of a similar distribution of forest and cropland/pasture/rangeland as those Western States named. We are you.

I am pleased today to be able to communicate to you the sorted problems with top driven initiatives but first I ask you to indulge me to begin with an analogy that I believe puts most of the problems into perspective. In the film Cool Hand Luke, the captain has to explain to Luke the core of his issues. When he states, “What we’ve got here is failure to communicate”, he sums up as well the problems with the National Blueway, NO COMMUNICATION!

The executive branch began with declaring the AGO (America’s Great Outdoors) initiative. This was intended to reshape the conservation efforts of the Nation. The Secretary of Interior followed up this initiative with Secretarial Order 3321, declaring the National Blueways System designation and edict for the stakeholders to join together in a cooperative manner to accomplish stated goals. The first problem is defining stakeholders to be agencies under the Interior Department, Department of Agriculture and Army to name a few. The true stakeholders are the 80 percent of people in Arkansas that are private property owners graced with a dubious honor with unknown consequences.

I want to point out the wording in the initiative whereby it is “not intended too”. My analogy here is that each day in America, millions of people leave home for some destination by automobile not intending to have a wreck. Yet, the result, each day, is multiple millions of dollars of property damage, injuries and death. All of this was

unintended when they began the journey. Somehow the wording of unintended does not give comfort when the executive branch is expecting results and some of the goals seem to target our way of life. Agriculture is identified as the single largest contributor to issues within the watershed, both good and BAD. Mr. Chairman and members of the committee, each of your States are identified as being heavily dependent upon agriculture and/or forestry, just as my beloved Arkansas and Independence County are as well. When the top income generator of your economy is targeted as the biggest contributor of bad issues within the watershed, the words not intended are somewhat disconcerting when the goals such as are stated belie the issue.

Let me quote from the delusory nomination document:

Page 10—"Water quality suffers from sediment, nutrient and biocide runoff from UNSUSTAINABLE AGRICULTURE PRACTICES. Surface and groundwater extraction for irrigation negatively affects aquifers and stream flow. The results of these changes are dramatic and will prove catastrophic to delta communities and the Big Woods ecosystem alike without concentrated attention to the GOALS AND OBJECTIVES that form the CORE PRINCIPLES OF THE NATIONAL BLUEWAYS INITIATIVE."

Page 15—"Many of the near and mid-term goals proposed in this nomination will be achieved through the work associated with the achievement of the AGO goals."

Page 16—"Agricultural practices, good or bad, have the biggest impact on the Watershed's environment."

Page 18—"The Coalition's central commitment and goal is to develop a conservation framework for the Watershed that implements a multi-level strategy for achieving this vision."

Goals are outlined:

Page 19—"Habitat short-term (1-3 years, 4a.) Establish minimum 180' wide vegetative buffers along ALL SURFACE WATER." (NRCS)

Page 20—"Agriculture Mid-term (3-7 years, 1) Complete enrollment of 30 percent of eligible cropland into conservation programs." (NRCS)

Page 21—"Hydrology Short-term (1-3 years, 3b.) Control encroachment of HUMAN ACTIVITIES into the existing floodplain." (USACE)

Page 21—"Hydrology Mid-term (3-7 years, 1) Complete reduction of on-farm, consumptive water use by 15 percent using irrigation efficiency practices." (NRCS)

"(3.a.) Setback levees to RESTORE HISTORIC FLOODPLAIN HABITAT."

Page 24—"DESIRED OUTCOMES—The success proposition for the White River Watershed National Blueway relies on the ability of the Coalition to DELIVER OUTCOMES that (1) achieve the objectives of the AGO pilot project as detailed in this section, and (2) translate the qualities of the partnership to the ENTIRE WATERSHED through strategic recruitment and management of additional Coalition members."

Page 28—"Of six dams in Arkansas, that 'have had a profound effect both in their immediate vicinity and throughout the entire Watershed.' 'The city of Batesville now owns all three dams and beginning in 2004 they were retrofitted to generate electricity. These dams have no flood control capabilities and hold back a relatively shallow pool of water. THE MAJOR IMPACT OF THESE STRUCTURES IS REDUCED FISH PASSAGE.'"

The devil is normally in the details and while the designation has an attractive outer shell, the details are troubling and some of the wording is problematic. Let's summarize how the nomination is structured and what it intends to accomplish. The executive branch issues an initiative, AGO, and thereby his appointee, the Secretary of the Interior, also a member of the executive branch made a designation of the White River to meet a vision and goals brought forth through the Presidential initiative.

Secretarial Order 3321 establishing the National Blueways System, in section 3 claims authority through various sections of United States Code and Law and says, "The bureaus within Interior have a broad panoply of legal authority to carry out their respective missions that support enhancing river recreation, undertaking river restoration, and pursuing river protection initiatives to pass on healthy rivers to future generations."

Section 7 of Secretarial Order 3321 says thusly, "Nothing in this Order is intended to authorize or affect the use of private property. Nothing in this Order is intended to be the basis for the exercise of any new regulatory authority, . . ."

The nomination identifies agriculture to be as currently practiced, "unsustainable agriculture practices". Irrigation is found to negatively impact the watershed. Continuation of current practices is deemed to be catastrophic and the only salvation is found in the goals and objectives that form the core principles of the initiative known as National Blueways. So we have the promise of unintended consequences to fulfill the following goals based upon what was identified (agricultural and irrigation) to be the problem.

Those goals include that a minimum of 180 foot buffer be established along all surface water. This means not just the White River itself but as well all tributaries of rivers, creeks, streams and ponds or lakes. This area includes places cattle and livestock water which would be fenced from their source of water.

Another goal is to complete enrollment of 30 percent of eligible cropland into conservation programs. There is no consideration of the need to produce food for humans and livestock, only a desire to eliminate crop production. Of course, another goal listed is to control encroachment of humans into the existing floodplain. Then again, another goal is to restore historical floodplains further restricting human interference into the floodplains. Did you note I brought forth the fact that Arkansas is 80 percent owned by private property owners that might object to being told not to go onto their hard earned property?

More goals were to reduce on-farm irrigation use by 15 percent while a study indicates Arkansas will need to increase its water use by 13 percent over the next few years. This contradicts what we need to have to sustain life over the term of these goals. In truth, the desired outcomes listed in the nomination indicate how this is determined to be possible. In the mandate to deliver outcomes and objectives of the AGO, there will be strategic recruitment and management of the right type of partners. The key word is "management" as relates to additional partners. Let me illustrate how this is done. There were three elected officials nearby that signed onto the nomination. I called the two mayors and the one county judge to inquire how they even knew this was happening. Each of them had a project or trusted contact that encourages them to write the letter of support. The enticement was the hope they were given for additional money to work on the slated projects in their area. That is how they would know the designation was in the works while I, with the river running through the middle of my county, would not be aware of the possibility. Those others were "managed" to come along and support the initiative.

As much as any of this, I am concerned about the literal disregard for human needs as relates to the discussion about the three dams in my county. The dams are determined to have no impact other than the fish passage. The nominees apparently forgot that the vast majority of the citizens of Independence County, population 36,647, get their water from the reservoir formed by the dam at Batesville. Also, all of our industries in Batesville receive their water from that source as well. Couple this with wanting to reestablish historical floodplains and no recognition of human needs and you can see why this is not a grassroots generated document. In fact, that one fact is the very reason local input should be paramount before any designation was developed.

As county judge, one of my main responsibilities is the road system of the county. This requires motor graders turning gravel in the roadbed, plowing ditches, putting out prime oil for surfacing with asphalt products. All this is necessary for the public to travel upon these roads. Am I to think that the needs of the public within the watershed would be unraveled by frequency mandates for blading instead of need? The very function of local government could be disrupted for basic services due to more permits required or some review process each time you needed to blade a road.

It is my belief that such edicts as "AGO" and the National Blueways Order circumvent the separation of powers, upon which our government was founded, as to be necessary for it to be a government as seen by Lincoln in his Gettysburg Address, "of the people, by the people and for the people". I fear that the continuation and toleration of executive authority through their appointees, such as this issue, without purview of legislative process and transparency, will lead to continued disembodiment of our people and our government. No process should be allowed to be enacted without local involvement and input and then the legislative action of Quorum Courts, State Legislatures and Congress for these issues that have a local and national impact.

I wish to close with a few local examples just recently brought to my attention. A local grocer has 80 acres in a rural area upon which he placed three adult hogs and a few piglets. There are no county ordinances restricting this activity. He had a visit from a State agency that required a few layers of red tape to finally resolve

that he could use his property in that manner. We have had in our area of the State in more than one county, several small gravel pits that are seldom used, closure orders from a State agency due to not having a permit. These are privately owned and used with no impact to their neighbors. Another community cleanup was ongoing by burning a couple of old buildings, build before any chemical treatments were used in processed lumber, attended by local officials and fire departments, and a State agency delivered a complaint upon that group. These were all within the watershed of the White River and can you imagine what unintended consequences could occur with a national recognition?

Private property rights are important to us in Independence County and we support voluntary conservation efforts wholeheartedly. We stand adamantly against the potential of involuntary conversions of private property due to executive edict. We founded a nation to deliver us from a king, how sad we could see this type action result in kingdoms being formed here in our county. There should be community driven conservation efforts and local decisionmaking, not mandates without due process of government.

Mr. Chairman and distinguished members of the committee, I thank you for the chance to be a part of the "due process" of true governance.

Mr. MCCLINTOCK. Thank you for your testimony.

Our next witness is from Popular Bluff, Missouri. Mr. Eddy Justice for 5 minutes.

STATEMENT OF EDDY JUSTICE, POPULAR BLUFF, MISSOURI

Mr. JUSTICE. Thank you, Mr. Chairman, for the opportunity to come and testify in front of this committee. I also want to thank our Congressman, Mr. Smith, for the work that he has done in fighting this, because it is the will of the people in our district that this not take place.

Earlier I was watching the Committee on Natural Resources where the Secretary of the Interior, Sally Jewell, was commenting. And the Congressman from Utah asked her what her plans were in regard to working with local communities and working with people on the ground as these orders went forward. And she said that she gave her commitment to work with the people on the ground as she went forward, as well as to follow the law. I hope that this is true.

I hope that she will keep her word. Because if she does coordinate with people on the ground, she will not be following the example of her predecessor, Mr. Salazar, who signed this order, never once, that I have any knowledge of, came to the White River watershed, never once held a town hall meeting there, never once had interaction with county commissioners. I know of at least 16 counties in this watershed that have signatures from county commissioners saying that they did not have a single clue this was going to happen, and they would not have supported it if it had, and they have sent letters saying so.

There was a news release by the Department of the Interior on January 1, 2013 that said that this initiative is part of President Obama's America's Great Outdoors initiative, and was established as a community-driven conservation and recreation agenda of the 21st century. There have been rumors that this is a collaborative effort. There have been rumors that this is a cooperative effort. I haven't seen it. Wouldn't that require maybe some announcement in a newspaper, or with a TV or radio, or town halls, or some way getting the input and cooperation of local people? We have not seen it in these counties.

The residents of this watershed deserve better. Our economy, in large part, has been based on recreation and tourism and in cattle farming and in row crop farming. None of this is possible without these waterways. And yet, we have, in the past, had the Ozark National Science Riverway in part of the Current River, which is a contributor in the watershed to the White River.

At least with the Ozark National Scenic Riverway, Congress acted. And they put this in place. But if you look at what that order looks like, and what has happened since with the regulations, with what the Department of the Interior has done, they are unrecognizable. And that is what the people in our area are concerned about. They are concerned about this being the first step of the Department of the Interior coming in and controlling our access to our river, our size of horsepower, the access we have for our cattle, the access we have for our entertainment and recreation through boating.

The general management plan of the Department of the Interior over the Ozark National Scenic Riverway has increased regulation on us and is about to do it again. They have a plan that is about to come out that is going to restrict us to a point that it could cripple our economy up and down the Current River in a way that would probably be unrecoverable. That is the kind of regulation that we are seeking to avoid. That is the kind of regulation that we cannot afford.

We, as the people in this area, have invested our lives, invested our children's future, invested everything we have in what is in this area. And it is very frustrating for us to have a controlling, nanny-type agency of people who probably have never even visited our area, trying to come down and tell us and regulate us to a point where our businesses will no longer be viable, our future for our children to recreate there and have homes there and have businesses there could no longer be a possibility.

Not only should this declaration be rescinded or put on pause, it needs to be taken away, and it should never come back again. There are rumors and accusations that the Department of the Interior is looking at doing 25 more of these over the next 5 years. If the people in these other 25 areas are treated like we have been treated through this designation with no say whatsoever, as if they know what is best for us, then I feel sorry for them, and I think they should stand up and fight just the way we are.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Justice follows:]

PREPARED STATEMENT OF EDDY JUSTICE, POPULAR BLUFF, MISSOURI

My name is Eddy Justice and I am a resident of Butler County in southeast Missouri. I have been the owner of Eddy Justice State Farm Insurance Agency since 1999. I am an avid user of the Current River, part of the White River Watershed, for recreation, and I boat and camp there many times throughout the spring, summer and fall months. I currently am renting property to use on the river and am looking to purchase property there in the near future. I am representing myself in my testimony today.

I am here today to testify before this committee in regard to the designation of the White River National Blueway by the Department of the Interior. Thankfully, due to pressure from many concerned citizens of the affected area, Congressman from Missouri's 8th District Jason Smith, U.S. Senator from Missouri Roy Blunt, and other Members of Congress from Arkansas, this designation has now been rescinded.

There is a long list of reasons why this step back by the Department of the Interior is a positive move, but I will address only two here today.

In a press release issued by the Department of the Interior on January 9, 2013, the statement was made that “The initiative is part of President Obama’s America’s Great Outdoors Initiative to establish a community-driven conservation and recreation agenda for the 21st century.” This is just one of many insinuations and statements that have been made to me and others across the affected area that the Blueways Designations was a collaborative effort that included local input.

To the best of my knowledge, not one single townhall meeting was held to gather local input. Not one request was issued for public input regarding this designation. Not one representative or letter was sent to any county commissioner in the affected area, advising them of the plans by the DOI to implement this designation.

The people of the affected areas, whether business owner, recreators, land owners, residents, employees, employers, or farmers, deserve to have a say in whether or not they want their home to be designated one way or the other by a Federal agency.

County Commissioners are elected to handle the business of these effected counties. How can they effectively do so when they are not even notified of these actions by the Department of the Interior? This is why at least 16 counties in Missouri alone have had commissioners sign letters to Secretary Salazar requesting the designation be rescinded.

The failure of the Department of the Interior to bother with obtaining local input while claiming to have issued this designation after having collaborated with local governments and organizations is irresponsible at best and at least hints at dishonesty and possible ulterior motives.

Another issue that I would like to address today is the fact that Federal agencies that are imposing these designations are doing so without any oversight from elected officials. These designations are being imposed arbitrarily, unilaterally and without representation.

The fact that the Department of the Interior can impose these designations without having to get the approval of Congress proves it is arbitrary, as well as the reality that the power they are allowed to wield is unlimited. We have seen this in the past with the Ozark National Scenic Riverways imposing harsh restrictions on access to the Current River and strict guidelines for use of the river while attempting to impose it without the input of the local residents who depend on the river for their very livelihood.

There are very few, if any, industries in the area existing in this watershed that are not affected directly by regulations imposed on our waterways. The Tourism Industry and the Timber Industry alone are dependent on the waterways so drastically, that further regulation on them would be detrimental at best and catastrophic at worst. I have many customers in my insurance agency that, without these industries, would not be able to maintain their businesses and incomes.

We all know of freedom loving folks from our past that were upset about being taxed but having no say in the implementation of those taxes. There are many in southeast and southern Missouri that believe we are now being regulated without representation. With this kind of unmitigated regulatory activity by Federal agencies in the past, it is very clear why local citizens are opposed to any further designations or groundwork for further regulatory activity without local input and without the oversight of elected officials.

There has been word the Department of the Interior is reviewing the idea of Implementation of Blueway Designation in as many as 25 other locations over the next 5 years throughout the United States including the Yellowstone River Watershed. It is my opinion and testimony that any implementation of regulation or designation without local input and consent is inexcusable and further proof of the attitude Federal agencies have—believing they know better how to manage local business and activity than those who live and work in the areas affected and actually have invested their lives to better themselves and the area they live in.

Mr. McCLINTOCK. Thank you, Mr. Justice. To our witnesses and to the audience, I apologize. We are required to break here in order to attend to business on the House Floor. That business is likely to take, I would think, at least 45 minutes. So we will reconvene some time—hopefully not long—after 2:15. I thank you for your indulgence. It is an occupational hazard with afternoon hearings

around here. But the committee will stand in recess until the call of the Chair at some point after 2:15.

[Recess.]

Mr. MCCLINTOCK. The committee will reconvene. The Chair thought it had promised not later than—or not earlier than 3:15, but staff informs me I actually said 2:15. So I guess we are covered on all of that. And again, I apologize to the witnesses as well as to the audience members for the interruption. The Good Lord willing and the creek don't rise, I don't think there will be any further interruptions.

We had left off with Mr. Sutton Bacon to begin his testimony. And again, thank you for your patience, welcome to Washington, and go for it.

**STATEMENT OF SUTTON BACON, PRESIDENT AND CEO,
NANTAHALA OUTDOOR CENTER, BRYSON CITY, NORTH
CAROLINA**

Mr. BACON. Thank you, Mr. Chairman, Ranking Member, and members of the committee. Thank you for the opportunity to testify today. My name is Sutton Bacon. I am the CEO of the Nantahala Outdoor Center. And I am here to offer insights about how programs like the National Blueways system can properly function, primarily through a small business lens.

As a background, NOC is the largest outfitter guide company in the United States. We operate in 12 national forests and parks, and we help over 1 million Americans experience public lands and waterways each year. To put that in perspective, our guests paddle enough river miles each year to travel to the moon and back twice.

I am also a small business owner. I employ 250 full-time employees and have over 1,000 seasonal employees on my payroll right now. We are the largest employer in our region. And I know firsthand about the economic and regulatory challenges that small business owners face. We are located high in the mountains of western North Carolina. And like so many other small, rural communities, our economy has suffered immensely through the recession. Plus, 88 percent of our county is federally owned. And one might say that our current economic situation is exacerbated because of these large Federal land holdings that diminish our tax base.

However, nothing could be further from the truth. We are located in one of the most conservative congressional districts in the State of North Carolina, and we proudly cling to a set of strong mountain values, such as hard work, honest communication, and family values. And central to our values is stewardship of our lands and waters.

Our community fully understands that outdoor recreation is the pathway to a growing and sustainable prosperity, one that is rooted in an experience-based economy, not an extraction-based economy. It can't be outsourced overseas as long as the health and protection and integrity of our natural resources are maintained. These jobs and economic impact will never go away. For example, on the Nantahala River, it alone is an \$85 million-per-year industry, sustaining over 1,000 full-time jobs. In fact, it directly supports over 20 percent of the workforce in our community.

We are the story about rural economic development. And to further enhance these economic dividends, we have created a regional watershed partnership, including the outfitter guide community, the Forest Service, Duke Energy, the Eastern Band of Cherokee Nation, local government, private land owners, businesses of all stripes, local universities and community colleges, non-profits, and user groups.

We are investing mostly private dollars in fundamental recreation infrastructure, implementing a cooperative marketing plan around our rivers and lakes, hosting national and international events in paddle sports and fishing, and we are establishing a 10-year community vision for our waterways. Drawing from our mountain values, we have shown that diverse, and even competing interests, can be overcome by earnest dialog and cooperation. And all of this is happening solely because of our own initiative in a bottom-up effort to improve our community.

As such, we are precisely the kind of community and diverse willing stakeholder group that could benefit from future Federal recognition programs such as the National Blueways. We would absolutely, in our region, cherish the recognition the blue ribbon and especially the brown DOT highway sign that we could put on our interstate.

I believe there are opportunities for the Federal Government to create tools that can engage local stakeholders and support a locally determined vision, since we all agree that community-based leadership promotes better management of our natural resources than distant and sometimes problematic bureaucratic intervention.

As such, these voluntary partnerships can be heralded through programs and branding programs like the Blueways that support local communities just like ours, who are dedicated to using their waterways to improve quality of life, create jobs, improve property values, and foster healthy, more active families.

I would suggest to the committee that efforts like the National Blueways system don't just promote natural resource ecosystems, but also the ecosystems of rural, economic development. Most of the \$85 million we generate on the Nantahala flows right back into the small towns where we live and work, supporting far more than the 1,000 people we employ directly.

I appreciate the opportunity to share my testimony with you today. Thank you.

[The prepared statement of Mr. Bacon follows:]

PREPARED STATEMENT OF SUTTON BACON, PRESIDENT AND CEO, NANTAHALA
OUTDOOR CENTER, BRYSON CITY, NORTH CAROLINA

INTRODUCTION

Mr. Chairman, Ranking Member Napolitano, and members of the committee, thank you for the opportunity to testify before you today. My name is Sutton Bacon, and I am the Chief Executive Officer of Nantahala Outdoor Center. Established in 1972, NOC is an outdoor recreation company located at the intersection of the Appalachian Trail and the Nantahala River in the Nantahala National Forest in Swain County, North Carolina. Originally a roadside inn, the company has evolved into one of the largest outdoor recreation companies in the Nation. We are also one of western North Carolina's largest employers with approximately 250 full-time employees and over 1,000 employees during peak season.

Over 1 million guests visit NOC annually to embark on a diverse collection of over 120 different itineraries, to learn kayaking at NOC's world-renowned Paddling

School, to travel abroad with NOC's Adventure Travel program, to shop at one of our LEED-certified flagship retail stores, or to enjoy NOC's resort amenities including our three restaurants and multi-tiered lodging. Each year, NOC guests paddle over 1 million river miles on Federal lands, enough for two voyages to the moon and back. NOC has recently been recognized as "The Nation's Premier Paddling School" by *The New York Times*, "Best Place to Learn" by *Outside Magazine*, and as "One of the Best Outfitters on Earth" by *National Geographic ADVENTURE*. Twenty-two Olympians and two Olympic Gold Medalists have called NOC home.

Through our programming, we strive to educate and engage adventure-seekers through dynamic, world-class instruction and tours on some of the world's most beautiful whitewater rivers and landscapes. We are committed to sharing our passion for the outdoors and our penchant for exploration with our guests. Our employees share a common vision of keeping NOC a dynamic, enjoyable, and successful place to work and of participating actively, considerately, and sustainably in the communities in which we operate. We firmly believe in the triple bottom line of people, planet, and profits.

My testimony today will discuss how public lands and waterways offer a pathway to an economic prosperity in the rural communities of western North Carolina. I will articulate how my company and a diverse, local stakeholder partnership have come together to protect and develop public access to our region's river system. I will also express support for the river protection and recreation-related elements of the National Blueways System. And finally, I will suggest that the model of cooperation between private and public entities found in our region is worthy of recognition and even replication in the rest of the country.

PUBLIC-PRIVATE PARTNERSHIPS AND RURAL ECONOMIC DEVELOPMENT

NOC is located high in the rugged mountains of western North Carolina in a small county with a population of 14,000 and a county seat of only 1,400 residents. Like so many other small, rural communities, our economy has suffered immensely through the recession. We continue to suffer from the loss of traditional manufacturing jobs to international outsourcing, as textile, garment, and furniture plants continue to close. Our housing and construction industries have collapsed. And, Swain County suffers from one of the highest unemployment rates in North Carolina (19 percent) and an equally disturbing rate of poverty (22 percent). A recent study indicated that 20 percent of Swain residents face "food insecurity," in other words, not knowing from where their next meal would come.

Approximately 88 percent of Swain County is federally owned and managed, the majority of this land included in Nantahala National Forest and Great Smoky Mountains National Park. Some might say that our current economic situation is exacerbated by these large Federal land holdings diminishing our tax base. However, nothing could be further from the truth. In fact, our small community has fully embraced the notion that our public lands and waters are the pathway to a growing and sustainable prosperity—a type of prosperity that cannot be outsourced overseas and is rooted in the value of experiencing these places directly.

Swain County's new economy is an experience-based economy. Whereas extraction and manufacturing industries have come and gone, our public lands boast a wealth of waterways, trails, and recreation areas, making Swain County a popular destination for outdoor enthusiasts. In fact, while our local manufacturing base continues to contract, the region's outdoor-based tourism economy has seen exponential growth, as has interest in tourism re-development, the enhancement of existing public-private tourism product, and the utilization of tourism-related natural resources in an environmentally sensitive manner. Human-powered outdoor tourism is truly the backbone of our future.

Our community recognizes the importance of activating public-private partnerships with our natural resources to enhance rural economic development. We enjoy a unique collaboration amongst diverse stakeholders such as the outfitter-guide community, local business leaders, the U.S. Forest Service, Duke Energy, American Whitewater, the Eastern Band of the Cherokee Nation, tourism development authorities and local governments from seven counties, the North Carolina university system, local community colleges, regional destination marketing organizations, and the Southwestern North Carolina Planning and Economic Development Commission. These diverse organizations work together every day to share the region's natural resources with millions of residents, visitors, students, paddlers, hikers, and bikers; to meet the energy needs of our region; and to maintain our forests' and rivers' healthy ecosystems. Our collaboration is based on trust, mutual respect, a spirit of compromise, open communication, and alignment.

There are numerous examples of how this stakeholder group has worked together for the benefit of our community and our user groups, from a decades-long FERC relicensing project that preserved consistent water flows on the Nantahala to a successful bid to host the 2013 World Freestyle Kayaking Championships, to collectively mitigating severe drought conditions to participating actively in a new forest planning process. The impact of our continual collaboration around the management of our public lands and waters guides the investments that public and private enterprise make in our communities and contributes to the branding of our region as a top destination for outdoor enthusiasts.

At the national level, it is easy to recognize the enormous economic impacts of outdoor recreation. According to a recent study by the Outdoor Industry Association, Americans spend \$646 billion on outdoor recreation every year. This is twice as much as they spend on pharmaceuticals or cars. Outdoor recreation creates \$40 billion in Federal tax revenue and \$40 billion in State and local tax revenue. Outdoor recreation providers, retailers, and manufacturers directly employ over 6 million Americans. In North Carolina alone, outdoor recreation generates \$19 billion in consumer spending and supports 192,000 jobs.

The national and State numbers are so staggering that they are, in some ways, hard to grasp. So, what does that mean at a local level, in the rural communities of western North Carolina? The direct economic impact of tourism and recreation in our seven-county region stands at \$663 million. The region's four primary rivers—the Little Tennessee, the Nantahala, the Oconaluftee, and the Tuckaseegee—include one of the Nation's three most popular rivers for whitewater paddling and commercial rafting, the most utilized competitive whitewater racing venue in the United States, a Trout Unlimited "Top 100 Trout Stream," one of the most popular float trips for young children in the Southeast, and a river that generates over 850,000 fishing permits annually. Beyond that, the rivers also provide opportunities for backcasting fishermen, relaxing tubing trips, and wildlife viewing for residents, visitors and second-home owners.

Even more locally, NOC commissioned a study in 2008 from Western Carolina University to quantify the economic impact of the Nantahala Outdoor Center and public outdoor recreation on the Nantahala River alone. The researchers calculated that the direct annual economic impact from the Nantahala was \$62 million with another \$23 million of indirect impact, for a total annual contribution of over \$85 million to our local economy—while supporting over 1,000 full-time jobs in our community. By comparing that number to the total workforce in Swain County, it can be said that over 20 percent of Swain County workers are employed due to the outdoor recreation economy.

None of this economic and civic revitalization would happen without our cherished public lands and waters. Our guests travel from all over the world to experience our mountains, rivers, and forests in a direct and meaningful way. The jobs created by using our natural resources to provide experience rather than extraction cannot be outsourced. As long as the health and integrity of our lands and waters are maintained, these jobs will never go away.

HERALDING THE WATER-BASED RECREATION ECONOMY IN WESTERN NORTH CAROLINA

Our situation in western North Carolina is exactly the type of locally driven vision the National Blueways System is designed to recognize and support. As noted before, our region boasts a strong and diverse stakeholder partnership, and this partnership works closely with Federal and State agencies to manage and promote these resources. While competing interests like power generation, steady lake levels, commercial rafting, guided fishing tours, conservation, public access, and economic development can sometimes work against each other, our mutual trust and willingness to compromise help us deal with difficult issues. Altogether these compromises make our region a more desirable place to live and to visit.

Managing resources and compromising in the present moment is one thing. But more importantly, our stakeholders are able to collaborate on a long-term vision for the region. We feel like western North Carolina should be the Nation's premier human-powered outdoor recreation destination. We are investing in our reputation and our tourism product. For example, we have committed over \$1 million to host the 2013 International Canoe Federation Freestyle Kayaking World Championships so we can reinforce the Nantahala River's reputation as a world-class whitewater resource. We are also committed to marketing the region as one of the Nation's best fishing destinations, hosting the U.S. Fly Fishing Championships in 2011 and organizing seven national fishing tournaments throughout the year with over \$70,000 awarded in prizes.

Perhaps most importantly, Duke Energy is providing over 50 new recreational enhancements in the western North Carolina area within the next 5 years including many new river access points. These access points, especially those on the Little Tennessee and the Tuckasee Rivers, will allow use of these rivers to grow with improved boat camping sites, fishing trails, and wildlife viewing areas. These investments in fundamental recreation infrastructure promise opportunity to businesses and entrepreneurs willing to provide guiding services or other trip amenities to visitors of these new resources. These new resources should provide opportunity for more businesses to grow, and they should help draw new visitors into the gas stations, restaurants, lodging, and retail stores in our region.

As you can see, the outdoor recreation economy is a sustainable economy in our region. Not only do we collaborate to share the benefits of our rivers and lakes, but also we recognize the importance of investing in them, marketing them, and enhancing them at regular intervals. Here in the Smokies we are lucky: we have the tools, resources, and willingness to communicate about our natural resources. Not every river in the country has what it needs to leverage its waterways for economic growth. That is where the National Blueways System comes into play. The National Blueways System is about the power of a locally determined vision for a waterway. In western North Carolina, our collective local vision is the primary voice in the management of our natural resources, but that's not the case everywhere.

THE IMPORTANCE OF THE NATIONAL BLUEWAYS SYSTEM

We all know that outdoor recreation is a major component of our economy. Much of the \$646 billion in annual direct consumer spending is generated by 12.4 billion outdoor outings taken by 141.9 million Americans, many of these on public lands and waterways. Since most Americans live within a mile of a river or a stream, many of these outings take place on or beside a river. Growing participation indicates that the outdoor economy is flourishing. According to the Outdoor Foundation, participants have increased by 7.5 million since 2006, and Americans are enjoying the outdoors more and more.

In fact, according to the same study, kayaking in all of its forms—whitewater, touring and recreational paddling—grew at over 10 percent each year from 2009 to 2012, and fly fishing participation grew 3 percent on average. Poised to capitalize on the surging growth of paddlesports participation around the country, the National Blueways System can even more firmly connect Americans with water-based recreational opportunities. The program fosters voluntary partnerships and brings together local stakeholders to create a locally driven vision for these natural resources. Community-based leadership will promote better management and increased use of the rivers and lakes enjoyed by millions of Americans. Recognizing waterways as Blueways will also provide a key rallying point for local communities to continue their stewardship of their local natural resources, ensuring clean water, healthy and active outdoor recreation, improved quality of life, higher land values in adjacent areas, as well as better economic and community prosperity.

I applaud the efforts of the Department of the Interior and Secretary Jewell; asking local stakeholders to collaborate and create a comprehensive plan for their river systems makes more sense than dictating it to them. As we have shown in western North Carolina, diverse and even competing interests can be overcome by earnest dialog and cooperation. We recognize that we are all trying to maximize the amount of value we can get out of our rivers and lakes, and we all know that we can do so while preserving their productivity, environmental integrity, and inherent beauty through smart resource management.

CONCLUSION

In these trying economic times, it is clear that Americans need more than ever the physical, emotional, and psychological benefits that human-powered outdoor recreation provides. Another Outdoor Industry Association research project showed that 80 percent of Americans feel that they are happier, have better family relationships and less stress in their lives when they engage in outdoor recreation. Anecdotally, during the recession, we witnessed more hikers pass through NOC on the Appalachian Trail than we had seen in years.

Our own internal research over the last 40 years indicates whenever there is economic uncertainty or a precipitous rise in gas prices, our guest numbers increase. This affirms the importance of outdoor recreation during these difficult times that our country faces. We take this charge seriously and appreciate our guests' confidence in our ability to deliver these authentic outdoor experiences. We also take seriously our ability to create jobs and positively impact rural economies in need. The jobs we are creating through the outdoors can never be outsourced so long as

we have the kind of open spaces, healthy forests, free-flowing rivers, and recreation infrastructure that the Blueways initiative recognizes.

I truly appreciate this invitation to speak with you today. Thank you for your attention, and I would be pleased to answer any questions you may have.

Mr. MCCLINTOCK. Thank you for your testimony.

And our final witness is Ms. Karen Budd-Falen, attorney for Budd-Falen Law Offices in Cheyenne, Wyoming, to testify.

STATEMENT OF KAREN BUDD-FALEN, ATTORNEY, BUDD-FALEN LAW OFFICES, LLC, CHEYENNE, WYOMING

Ms. BUDD-FALEN. Thank you very much, Mr. Chairman and members of the committee.

[Pause.]

Ms. BUDD-FALEN. Is that better? All right, thank you. I am also an attorney specializing in protecting private property rights, rural communities, rural counties, and multiple use on the Federal lands. Today I would like to offer to this subcommittee legal and factual information surrounding Secretarial Order 3321, the National Blueways Initiative.

In my opinion, this initiative has no basis in Federal statute, and should be withdrawn. The U.S. Constitution that set forth the very foundation of this Nation requires that the bureaucracy can only act under the direction of Congress. There is simply no congressional authority for the National Blueways program.

Additionally, like its predecessor, the Great American Outdoors Initiative, the National Blueways order was never published or made available for public comment in the Federal Register, nor has there been any compliance with NEPA or other rulemaking processes. There simply has been no public input.

Now, make no mistake about it. These kind of special land designations have very real, personal, social, and economic impacts on land owners, rural communities, small businesses, and local governments. This is true, whether it is a congressionally designated area such as wilderness or wild and scenic rivers, or bureaucratically designated areas such as a national monument, a Blueway, lands with wilderness characteristics, a water trail, or the brand new MOU that just came out that creates landscape and watershed-scale conservation demonstration areas. None of those have congressional authority. In fact, the MOU that I talked about cites as its only congressional authority the America's Great Outdoors Initiative.

Although such designations are often accompanied by great proclamations that they are going to focus and coordinate Federal resources, or that existing land uses will be protected, this has simply not proven to be the case. Existing uses are almost always negatively impacted, either with regulatory impositions, or because of radical environmental group litigation.

While special designations will impact local citizens and the local economy, these same communities and citizens rarely have a voice in the management of specially designated lands and waters. Indeed, the intra-agency National Blueways Committee, established under Order 3321, includes no representatives of State governments, local governments or private citizens.

Furthermore, for these “multi-state watersheds,” only one State sponsor is required. I would argue that any proposed designation should receive a State sponsor from each and every State affected, as well as the support of a majority of impacted local governments. The congressional delegations and impacted States should also have input and fair ability to comment on proposed designations. But that is not what the Executive order allows.

Additionally concerning is the fact that under Order 3321, the Department of the Interior is not required to view State and local land use management plans. Natural resource conservation districts and counties across the Nation have land management plans to protect its waters and its watersheds. Yet, the Federal Government does not review a single one of these plans before imposing an entirely new designation on top of them.

The DOI proposes to “realign DOI agency and bureau activities and programs to protect and restore and enhance natural, cultural, and recreational resources” of a designated river. To reassign agency purposes at the whim of the bureaucracy is to take huge liberty with congressionally designated purposes, flying in the face of federalism. This order may also invite increased involvement into areas not traditionally within the purview and jurisdiction of the Federal Government, such as State and private lands.

The National Blueways is not precedent-setting for its overreach or lack of statutory basis. In order to protect ourselves from this unconstitutional abuse to power, we must continue to demand our Nation’s founding principles of checks and balances be honored.

I would be happy to answer any questions that you have. Thank you.

[The prepared statement of Ms. Budd-Falen follows:]

PREPARED STATEMENT OF KAREN BUDD-FALEN, OWNER/PARTNER—BUDD-FALEN LAW OFFICES, LLC

My name is Karen Budd-Falen. I am a fifth generation rancher and have an ownership interest in a family owned ranch in Wyoming. I am also an attorney specializing in protecting private property rights, rural counties and communities and multiple use on the Federal lands. In my opinion, the National Blueways Initiative, created by Interior Secretarial Order 3321 dated May 24, 2012, has no basis in Federal statute, thus is an *ultra virus* action by the Department of the Interior (“DOI”) and should be withdrawn in its entirety. See Interior Order No. 3321, Establishment of a National Blueways System. Additionally, I would urge this committee to carefully examine this and other programs and initiatives set forth in President Obama’s America’s Great Outdoors Initiative in 2010. As with the National Blueways Program, many of these related initiatives have no basis in Federal statute and will significantly hurt many rural communities, local governments, local businesses and landowners.

Despite the claims in Secretarial Order 3321, local governments such as counties and conservation districts, believe that this Washington, DC “collaboration” with absolutely no sideboards guaranteeing general public participation, general public notice and comment or the specific involvement of ALL impacted local governments will actually impede protection and conservation of local watersheds, not enhance it. Neither the America’s Great Outdoors Initiative nor National Blueways Order No. 3321 have been published and available for public comment in the *Federal Register*, nor has there been any compliance for either document with the National Environmental Policy Act (“NEPA”) or the rulemaking requirements in the Administrative Procedure Act (“APA”). Thus, in addition to the fact that the National Blueways System has no Congressional authorization, it has not been through the scrutiny of a public comment period. In and of itself, that is an additional reason for withdrawal of Secretarial Order 3321.

In addition to requesting that the subcommittee seek the withdrawal of the National Blueways Order, I would also draw the committee’s attention to “section 9:

Expiration Date” within Order 3321 which allows the order to be published in Interior manuals and handbooks. This is concerning because the policies and direction in this order can easily survive action taken by this committee, by the DOI simply placing the provisions of Order 3321 in a departmental manual. That is exactly what happened with Secretarial Order 3310, the “Wildlands Policy.” Although Congress was successful in getting that order withdrawn, its effects continue to be felt because the policy itself was simply placed in Bureau of Land Management (“BLM”) manuals and handbooks. Thus, I would caution the committee that withdrawal of the National Blueways Order is not enough; I recommend that the committee further ensure that after Order 3321 is withdrawn or revoked, the policy does not continue to be implemented through agency or department manuals and handbooks or Memorandums of Understanding (“MOU”).

I. IMPACTS OF SINGLE FOCUS LAND DESIGNATIONS ON PRIVATE PROPERTY, FEDERAL LAND MULTIPLE USE, LOCAL GOVERNMENTS AND AMERICAN CITIZENS

There is no mistake that whether it is a congressionally designated area, such as a wilderness or wild and scenic rivers designation, or a bureaucratically designated area, such as a national monument, land designations have real, personal, social and economic impacts on landowners, rural communities, small businesses and local governments. Although it may sound good to proclaim that these designations are only to “focus and coordinate Federal resources,” or “that existing uses will be protected,” that is simply not the case. Designations like National Blueways, Lands with Wilderness Characteristics, Water Trails, National Monuments and others will impact the local citizens and local economy, yet local communities and citizens rarely have a voice in the designation or management.

For example, Tim Lequerica has a ranch in Oregon through which the Owyhee Wild and Scenic River designation runs. Mr. Lequerica’s ancestors were Basque immigrants to the Owyhee River area in 1900, and his family has worked in the livestock industry since that time. The Lequerica private land is surrounded by BLM managed land within the Owyhee wild river canyon. He holds a permit to graze 444 cattle in the Saddle Butte BLM Allotment from November 1 to February 15.

The cattle in this allotment used to depend entirely on drinking water from the Owyhee River. Although the Owyhee River was named as a wild and scenic river by Congress in 1984, the legislation promised that local ranches would be protected. Since ranching use of the River has existed since the 1900s, this use could not have been harming the river if Congress thought the river was pristine enough to still be “wild and scenic.”

In 1998, environmental groups sued the BLM to eliminate the use of these ranches along the Owyhee River. The litigation was not centered on specific ranching use of the Owyhee River *per se*, but on whether the BLM had jumped through the correct procedural hoops in writing a management plan for the Owyhee Wild and Scenic River. The ranchers intervened in this litigation because these groups were trying to stop access to the River¹ by livestock while the BLM prepared a new management plan. If these ranchers had lost their access to water, grazing would have been eliminated despite the protection given to these ranchers by Congress. Collectively, the impacted families paid \$42,000 just to participate in the litigation.

Ranchers and local governments are impacted in the same way by Presidential National Monument designations. For example, Brian Gasvoda resides in Chouteau County, Montana. He is the fourth generation to raise a family on this land. In 2001, President Clinton designated the Upper Missouri Breaks National Monument which included his unfenced private lands and his BLM grazing allotments.

Although the Monument’s Presidential Proclamation “protects” current land uses on National Monument land, the BLM management plan for the Monument, pushed by litigation by environmental groups, has caused significant changes. After the BLM finished its management plan, in 2010, an environmental group sued the BLM seeking further restrictions and requesting an injunction on road use and livestock grazing within the Monument. Mr. Gasovda calculated that if grazing had been enjoined within the Monument, his ranch would need approximately 651 tons of hay to feed the displaced livestock for 155 days. At that time, hay cost approximately

¹ As an aside, although the Plaintiffs claimed in the litigation to be concerned about the management of the Owyhee Wild and Scenic River, their true goal was to eliminate the ranchers’ use of these lands. Because of the devastating impacts of eliminating the use of the River for water for livestock, the ranchers agreed that they would stop using the River if there were alternative sources of livestock water. The Federal District Court granted the ranchers’ request to develop alternative water, over the strong objection of the Plaintiffs. The environmentalists wanted no water use anywhere at all, which would mean that the ranches in this area would have been eliminated.

\$110 per ton hauled into his area, therefore it would have cost \$71,610 to keep his livestock alive.

Additionally harming was the proposal to close many of the roads within the Monument. Many of these roads are historic and/or public roads. This rancher, like the others within the area, needed to keep these roads open, in order to access, maintain and keep his private and leased ground operational. Again, these ranchers had to retain legal counsel to intervene in the litigation to ensure that the promise in the Presidential Proclamation was honored. Thus, far from simply bringing national recognition and assisting to focus Federal resources, this designation brought legal battles and unwanted attention to those who had already been protecting these lands for generations.

The County Commissions impacted by the Grande Staircase-Escalante National Monument tell of the same harms. The Grande Staircase-Escalante National Monument was created by Presidential Proclamation 6920, dated September 18, 1996. According to that Proclamation, "All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws, other than by exchange that furthers the protective purposes of the monument." However the Proclamation also stated, "The establishment of this monument is subject to valid existing rights. . . . Nothing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing on Federal lands within the monument."

Despite this lofty language, Kane and Garfield Counties in Utah have suffered severe economic damage as approximately 10,000 animal-unit months (AUMs) of livestock grazing within the Monument have been lost, resulting in a multi-million dollar annual loss to these local economies. Some of these reductions occurred because with the new land designation, local ranchers have a more difficult time constructing and/or maintaining range improvements because of the restrictions on or closing of roads. Additionally, livestock grazing permits that are renewed have been appealed by environmental groups seeking to eliminate economic use of the National Monument.

In 2004, in order to assess the economic impacts due to the permanent or temporary non-use of five grazing allotments on the Grand Staircase-Escalante National Monument, Kane and Garfield Counties hired Dr. John D. Groesbeck, a professor of economics at Southern Utah University's School of Business, to conduct an economic analysis. His report concluded that the loss of grazing animal units within the national monument clearly left a void in the economies of the Counties, contributing to a reduction in taxable income generated by each County. His report specifically concluded that the loss of approximately 4,000 grazing "AUMs" meant (1) a loss of taxable property values for both Kane and Garfield Counties of approximately \$745,200; and (2) the loss of annual sales revenue for both Kane and Garfield Counties of \$165,763. He also opined that the dollars generated from sales revenue affiliated with the range-fed cattle industry that would have typically provided direct funding for each county and their related municipalities in the forms of sales taxes and business property taxes would also be lost, including an estimated \$24,185 in direct government-related funding during 2004 alone, and an estimated \$264,819 during the 10-year grazing permit term.

These are real impacts to private landowners and rural local governments from "well-intentioned" land use designations by Federal agencies or the Congress. Even those continuing uses which are to be protected and respected eventually come under attack. It is simply not correct to say that designations such as "National Blueways" "headwaters to mouth" have no real impact on local landowners and local governments. Simply ask the local landowners and governments who live with a Federal designation.

II. OVERVIEW OF SECRETARIAL ORDER 3321

Secretary's Order No. 3321 establishes the National Blueways System, a program designed to "recognize river systems conserved through diverse stakeholder partnerships that use a comprehensive watershed approach to resource stewardship." The system is intended to provide a new national emphasis on the unique value and significance of a "headwaters to mouth" approach to river management, while encouraging stakeholders to integrate their land and water stewardship efforts by adopting a watershed approach. To oversee the effort, Order No. 3321 establishes an intra-agency National Blueways Committee. There are no State governments, local governments or private citizens appointed to or represented on the committee.

Furthermore, Order No. 3321 designated the Connecticut River and Watershed as the first National Blueway to serve "as a model for future designations." The des-

ignation included 7.2 million acres. Less than a year later, the Department designated the White River and Watershed (Arkansas and Missouri) as the second National Blueway. The White River National Blueway encompassed 17.8 million acres, 700 river miles, 30 to 40 Arkansas counties and 1.2 million people. Yet even with this impact and while Interior claimed that there were 31 supporting organizations, there were only 2 listed local government sponsors and 2 business sponsors, along with 11 Federal agency sponsors. There was not one County listed as supporting this designation. Once the local public learned of and understood the designation, strong objections were issued to the Department. The Designation of the White River National Blueway was withdrawn on July 3, 2013.

Following those designations, the DOI published notice of its *Proposed Information Collection: National Blueways System Application*, See 78 Fed. Reg. 26062–26063 (May 3, 2013), announcing the collection of public information necessary to nominate a river and associated watershed for National Blueway Recognition. Despite the fact that 7.2 million acres across four States and 17.8 million acres across two additional States had already been designated as Blueways, the May 3, 2013 *Federal Register* notice was the very first opportunity for public comment on any aspect of the National Blueways program.

A. There is No Statutory Authority Supporting the National Blueways Initiative

Although it may not be “politically correct,” it remains a fact that the Federal administrative agencies are created by the Federal Constitution and the U.S. Congress and that they are to only act as directed by the legislative body. Article I, Section 1, of the U.S. Constitution plainly states that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” Even the “necessary-and-proper” clause in the eighth section of Article I recognizes that only Congress has the power “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.”

Additionally, to ensure that the Federal Government would not completely subsume the other branches of government and tip the scales of the “checks and balances” created by the Founding Fathers, James Madison presented to the first U.S. Congress a series of 10 Amendments (the Bill of Rights) to the United States Constitution. After enumerating specific rights retained by the people in the first 8 Amendments, the 9th and 10th Amendments again spelled out the principle of limited Federal bureaucracy. In light of that principle, the question before this subcommittee should be whether Congress has enacted a statute which would grant to the DOI the authority to create the National Blueways Initiative. A review of the statutes cited in Executive Order 3321 shows that the answer is “No.”

Section 3 of Order No. 3321 notes that “[t]his order is issued in accordance with authority provided under the Take Pride in America Act, Public Law 101–628; the Outdoor Recreation Act, Public Law 87–714; and the Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009, Public Law 111–11.” See Ken Salazar, *Order No. 3321* at 2, sec. 3. The same section states further that, “bureaus within the Interior have a broad panoply of legal authority to carry out their respective missions that support enhancing river recreation, undertaking river restoration, and pursuing river protection initiatives to pass on healthy rivers to future generations.” While this testimony is not an attempt to assail the “broad panoply of legal authority” for individual program activities provided to the Department, the specific authorities cited in Order No. 3321 do not provide broad authority for the designation of a “headwaters to mouth” management program that includes private, State and Federal land.

1. Take Pride in America Act

The Take Pride in America Act, Pub. L. 101–628, 104 Stat. 4502 (1990), *codified at* 16 U.S.C. §§ 4601–4605, states a purpose and intent:

[t]o establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—

(A) to instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources;

(B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and

(C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.

See 16 U.S.C. § 4601(b)(1). Even assuming a reading most favorable to the Department, the statute falls well short of providing any authority to specifically “des-

ignite” an entire watershed covering vast amounts of private land. In fact, the statute does little more than authorize the Department to instill, encourage, and/or promote public involvement in the stewardship of our Nation’s resources. To argue that the statute provides authority for the designation of watersheds concurrent with the Department’s independent Bureaus endeavoring to “align the execution of agency plans and implementation of agency programs to protect, restore, and enhance the natural cultural, and/or recreation resources associated with designated National Blueways” is a significant overreach. *See Order No. 3321*, at 3, sec 6(d).

2. Outdoor Recreation Act

The Department also cites to the Outdoor Recreation Act, Pub. L. No. 87–714, 76 Stat. 653 (1962), *codified* at 16 U.S.C. §§ 460k–460k-4. That statute authorizes the Secretary of the Interior to “to administer such areas [i.e.—areas within the National Wildlife Refuge System, national fish hatcheries, and other conservation areas administered by the Secretary of the Interior for fish and wildlife purposes] or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use.” *See id.* § 460k. Because designated Blueways do not constitute the areas outlined by the statute,² the Outdoor Recreation Act does not provide the statutory authority for the National Blueways Initiative. Additionally the Outdoor Recreation Act only applies to lands within the jurisdiction of certain Interior bureaus and agencies, not to private land.

3. Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009

The DOI also rests its authority on the Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009, Pub. L. No. 111–11, 123 Stat. 1165 (2009), *codified* at 16 U.S.C. §§ 1015–1015b. While this statute provides authority for Interior to create and establish a watershed program that emphasizes many of the same goals as the National Blueways System, it remains that the program authorized by this particular statute is a specific, separate, and distinct program that is currently operated by specific Bureaus within the Department. *See U.S. Department of the Interior, Bureau of Reclamation, Cooperative Watershed Management Program*, available at <http://www.usbr.gov/WaterSMART/cwmp/index.html> (last visited June 25, 2013). Simply, this statute does not apply to the millions of acres of State and private lands included with a Blueway’s designation.

4. America’s Great Outdoors Initiative

The most disturbing “authority” for the National Blueways Initiative is its undeniable connection to a document entitled “America’s Great Outdoors: A Promise to Future Generations” (hereinafter “AGO Initiative”). The AGO Initiative was based upon a Presidential Memorandum signed by President Obama on April 16, 2010. The Presidential Order and its resulting AGO Initiative clearly defines the administration’s view toward using Federal agency fiat, rather than Congressional authorization, to support the goals of the Presidency regarding Federal (and private) land and resource management. The Memorandum required the Secretaries of the Interior and Agriculture, the Chair of the Council of Environmental Quality and the Administrator of the Environmental Protection Agency to conduct “listening sessions” throughout the United States and to prepare recommendations on “reigniting our historic commitment to conserving and enjoying the magnificent natural heritage that has shaped our Nation and its citizens.” Although public “listening and learning sessions” were held, there was no public comment opportunity pursuant to the APA prior to the issuance of the final report in February 2011.³ That report contained 111 pages and hundreds of recommendations to “begin implementation of this 21st century conservation agenda.” These recommendations are now being implemented through administrative agency guidance documents (including Secretarial Orders, such as Order 3321). The AGO Initiative is also the source for other, equally concerning programs impacting private property and Federal multiple use lands. These programs include:

²Pursuant to sections 460k–1 and 460k–2 of the Outdoor Recreation Act, the Secretary is also authorized to “acquire areas of land, or interests therein,” when such areas meet certain criteria, and he may “cooperate with public and private agencies, organizations, and individuals,” including accepting donations of real property. The designation of a Blueway should not be used as an excuse for the Federal Government to “acquire” private land.

³Sally Jewell, the current Secretary of the Interior, provided the introduction for the President at his press conference announcing the completion of the AGO Initiative in 2011.

a. Secretarial Order 3323: Establishment of the America's Great Outdoors Program

On September 12, 2012, then Interior Secretary Salazar signed Secretarial Order ("SO") 3323: Establishment of the America's Great Outdoors Program to "formalize[] the Department's America's Great Outdoors Program with a vision of connecting Americans to the outdoors and conserving and restoring America's land, water and wildlife." My concern with the SO is not with its list of lofty goals "promoting conservation" but with the fact that the SO designates 20 specific "Landscapes of National Significance," 28 different "Landscapes of Regional Significance," 58 different "Rivers and Water Trails" and 19 different "Great Urban Parks and Wildlife Areas." The question with the SO is not whether these areas should be protected and conserved, but rather whether the private landowners and State and local governments included in these designations even have knowledge regarding these designations, let alone support them. It is one thing to conduct public listening sessions at the Nation's college campuses as was done to develop the AGO Initiative, but it is quite another to make a wish list of 125 on-the-ground designations without public input, including the input of affected State and local governments and private property owners.

b. Secretarial Order 3289: Landscape Conservation Cooperatives

Another Interior SO is entitled "Order No. 3289: Addressing the Impacts of Climate Change on America's Water, Land and Other Natural and Cultural Resources." The only authority given for this SO is Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. This SO suggests strategies to address sea level rise, including the acquisition of upland habitat and creation of wetlands, investment in new wildlife corridors, and consideration of ways to reduce the Department's carbon footprint. The SO also grants additional authority to the USGS' regional science centers, whose original mission was to "develop[] regional science centers to provide climate change impact data and analysis in response to the needs of fish and wildlife managers as they develop adaptation strategies in response to climate change." The SO now has expanded that mission to "synthesize and integrate climate change impact data and develop tools that the Department's managers and partners can use when managing the Department's land, water, fish and wildlife, and cultural heritage resources." This mission creep is concerning considering that with a few exceptions, the jurisdiction for fish and wildlife management resides with the individual States and, again with a few exceptions, water is owned and managed by the individual States.

SO 3289 also created a program called "*Landscape Conservation Cooperatives*" ("LCC"). Among other things, LCCs direct the BLM to focus its land use planning efforts on "conservation and restoration" to make "all lands" more resilient to climate change and protect wildlife corridors that cross Federal lands. There are 22 designated landscapes in America, the boundaries of which did not include any input from State or local governments. *See* Exhibit 1. In this SO, there is also no mention of the Taylor Grazing Act or the Multiple Use Sustained Yield Act, which actually set forth Congress' direction to the BLM for management of the public lands.

c. New National Monument/Antiquities Act Designations

On February 14, 2010, the public learned that the Obama administration was considering limiting the multiple use on over 10 million acres of Federal/public land, by possibly designating 14 new National Monuments under the Antiquities Act.⁴ While the designation of National Monuments is technically to only include the minimum amount of land necessary to preserve America's "antiquities," in recent years, these designations have been significantly larger and have had a severe negative impact on the tax base in many western communities and counties. But because National Monuments are designated under the Antiquities Act pursuant to a Presidential Executive order, there is limited legal recourse in opposing the designations in Federal court.

⁴At the end of the Bush II administration, there were 100 National Monuments, located in 27 States, totaling 12,091,930 acres. President Teddy Roosevelt established the first National Monument, Devils Tower, in Wyoming in 1906. President Bill Clinton created the most National Monuments, 19 plus the expansion of 3 existing monuments. Only Richard Nixon, Ronald Reagan and George H.W. Bush did not create any new monuments under the Antiquities Act. Should the Obama plans come to fruition, the amount of land within the National Monument system would almost double under one administration.

d. Secretarial Order 3310: Interior's Wild Lands Policy

Another change from the multiple use mandate that was implemented in response to the AGO Initiative was Interior's Wild Lands policy. That policy required the BLM, as part of its land use planning duties, to inventory and map lands with wilderness characteristics outside existing designated Wilderness or wilderness study areas. These inventories were to be "integrated" into [BLM's] land management decisions. This policy was strongly criticized throughout the West and was "de-funded" by Congress. On or about June 11, 2011, Secretary Salazar withdrew the Secretarial Order.

However, although the SO was withdrawn, the BLM handbook and manual requirements were not changed and the BLM is still complying with the Wild Lands SO by complying with the agency's manuals and handbooks and mapping "Lands With Wilderness Characteristics" ("LWC"). As a specific Wyoming example, the BLM, as part of the Big Horn Basin resource management plan, included a layer of BLM inventoried LWCs. So while the requirement to "manage" those inventoried lands under a specific heading called "Wild Lands" has been withdrawn, the inventories of these lands as LWCs are still noted and included in BLM's land use plans as an information layer, which will inform future agency management decisions.

B. Assuming Arguendo There is Appropriate Statutory Authority for Order 3321, There are Significant Flaws With the Order Itself

Assuming *arguendo* that the Department possesses the necessary authority for the National Blueways Program, there are significant flaws in the program's implementation. First, the Department's materials, specifically the "Draft Application Instructions," note that for "multi-state watersheds," only one State sponsor is required, in addition to the Federal Sponsor. Since Blueways consists of multiple States and are "nationally and regionally significant rivers and their watersheds," it is probable that most, if not all, designated systems will be comprised of "multi-state watersheds." Given the significant impact of these designations to State and local citizens, economies and local governments, any proposed designation should receive a State sponsorship from each and every State, as well as the support of a majority of the impacted local governments. Similarly, before any National Blueway is designated, Interior should specifically inform and allow adequate time for the entire Congressional delegation of the impacted State(s) to respond.

Second, the DOI is not required to review relevant local land use and management plans from impacted local governments. Many rural counties and conservation districts have officially adopted land use or natural resources management plans that reflect the local entities' position on Federal and/or State land management decisions. Furthermore, Federal statutes, including the NEPA and the Federal Land Policy and Management Act, require Federal agencies making land management decisions to review and discuss any inconsistency of the proposed Federal action with local government plans. Where inconsistencies exist, the Federal agency should take steps to reconcile its actions with local plans. *See e.g.* 40 CFR §§ 1506.2 and 1506.2(d); *see also, e.g.* 43 U.S.C. § 1712(c)(9) and 16 U.S.C. § 1604(a). As established by the current SO, National Blueways designations violate these statutes.

Third, the Department's materials repeatedly note a commitment to address and coordinate with local stakeholders. However, the Department's materials do not define or elaborate on who or what constitutes an applicable stakeholder. In contrast, the statute authorizing the Cooperative Watershed Management Programs⁵ specifically identifies stakeholders and requires, where appropriate, their participation. Example stakeholders in that case include, but are not limited to, representatives of: hydroelectric production; livestock grazing; timber production; land development; recreation or tourism; irrigated agricultural production; the environment; potable water purveyors and industrial water users; private property owners; and local agencies with authority within the watershed. At a minimum these same stakeholders should also be notified and included in a decision to designate a Blueway. Additionally, the Blueways application instructions require the identification of "member organizations, municipalities, agencies, and other stakeholders . . . supporting the proposed recognition as a National Blueway." While broad, the applica-

⁵The Cooperative Watershed Management Program should not be confused with the December 2012 MOU creating "large-scale landscape and watershed conservation demonstration areas." This MOU cites as its authority, "This agreement is based on existing authorities including the President's Memorandum of April 16, 2010: A 21st Century Strategy for America's Great Outdoors, 75 Fed. Reg. 20767 (April 20, 2010), and various authorities within the context of the laws or regulations governing specific programs administered by the agencies." The MOU directs the nine "Federal family" members to coordinate the already established watershed teams on specific "landscapes and watersheds across the Country."

tion requirements do not include the identification of organizations, municipalities, agencies, and other stakeholders *not supporting the proposed recognition as a National Blueway*. This is unfortunate given that the Department does not provide notice and opportunity for comment to the public at large.

Fourth, is the lack of specificity for designation. The Department's responses to questions submitted by the Senate Energy and Natural Resources Staff following a January 28, 2013 briefing by Interior's Senior Advisor Rebecca Wodder state that "the diversity of the partnership, having a shared vision, goals and objectives, the condition of the river and watershed, and having a strategy to integrate land and water management actions to achieve shared outcomes *are the key elements* of the evaluation, rather than the mix of public and private land." The concern here is that none of the key elements are defined, explained, or measured by any quantifiable factors. For example, when evaluating the "condition of the river," what types of conditions make it more or less likely that a proposed Blueway will be designated? Explanations of these key elements, including quantifiable factors, standards, or thresholds for the evaluation of a Blueway's nomination, must be defined prior to this program moving forward.

Fifth, following the Secretary's Order, the DOI entered into a Memorandum of Understanding ("MOU") with the Department of Agriculture and the Department of the Army to "establish a framework for collaborative efforts to identify and create opportunities to work together as partners to accomplish shared, compatible, and priority conservation, restoration, outdoor recreation, environmental education, and sustainable economic objectives in support of the National Blueways System as a whole, and specific designated National Blueways." The MOU established several objectives, including: (1) Conserving, protecting, and enhancing the natural diversity and abundance of fish and wildlife species, and the ecosystems upon which these species depend; (2) restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters; and (3) Integrating and adaptively managing the land and water resources, including agricultural and working lands and waters, within the National Blueways System consistent with applicable laws.

According to the MOU, compliance is to be voluntary and non-regulatory. What is concerning is that one MOU objective is taken directly from the Clean Water Act. See Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1251 (stating the Congressional declaration of goals and policy as the "restoration and maintenance of chemical, physical and biological integrity of the Nation's waters."). It is hard to understand how the objectives in an MOU implementing the AGO Initiative and National Blueways can be voluntary and mandatory at the same time.

Finally, the designation of huge watershed systems buttressed by lofty objectives such as: "restoring and maintaining the chemical, physical, and biological integrity of the Nation's water" or "conserving, protecting, and enhancing the natural diversity and abundance of fish and wildlife species, and the ecosystems upon which these species depend," will in fact increase the regulatory burden and scrutiny in local areas while at the same time removing local control and autonomy. Section 5(d) of Order No. 3321 states that "Bureaus within Interior, to the extent permitted by law and consistent with their missions, policies, and resources, shall endeavor to *align the execution of agency plans and implementation of agency programs to protect, restore, and enhance the natural, cultural, and/or recreational resources associated with designated National Blueways.*" This statement is reinforced in the Joint "Memorandum of Understanding," which states that the Secretary's Order "directs Interior to *align the implementation of all plans and programs in Interior with the National Blueways System.*" This "realignment" of the missions of Interior's bureaus and agencies will likely have the unintended consequence of focusing regulatory scrutiny and burden, largely from established statutes and regulations, into the designated Blueway area, if not by the bureau, but by litigation from radical environmental interests. As a result, the non-regulatory program may bring a heavier regulatory hand. Relatedly, this may serve to undermine and replace local governmental control and administration of resource conservation and management, with Federal agency mandates and edicts. The Department's use of designated National Blueways, either independently or in conjunction with other programs created by the AGO Initiative, such as Landscape Conservation Cooperatives, should not be used to expand the Federal Government's power into areas currently managed by local governmental entities and beyond the Federal Government's control.

I appreciate the opportunity to present this testimony to you. I would be happy to respond to any questions by the committee. Thank you.

Mr. MCCLINTOCK. Great. Thank you. Thank you very much for your testimony, and all of you, for your attendance today. We will

now go to 5-minute questions from the Members. And the Chair will begin with Judge Griffin.

We were told earlier that the Blueways are voluntary, it is an open process, it is a designation in name only. Why is that objectionable?

Judge GRIFFIN. As long as it is truly voluntary—we participate in programs every day that are voluntary. But the——

Mr. MCCLINTOCK. Did you find it to be voluntary?

Judge GRIFFIN. I apologize.

Mr. MCCLINTOCK. Did your community find the designation of the White River to be voluntary?

Judge GRIFFIN. There was no one notified it was even happening, so it certainly was not voluntary. It was compulsory.

Mr. MCCLINTOCK. Mr. Justice, was that your impression, as well?

Mr. JUSTICE. There were 16 counties that people around me have talked to that their county commissioners had signed letters that they knew nothing about this. So if the very people who were responsible for the operation of these counties knew nothing about it and signed letters to say such——

Mr. MCCLINTOCK. So it is voluntary, then, in the sense that it is imposed upon you without consultation.

Mr. JUSTICE. To the best of my knowledge, that is the way to say it.

Mr. MCCLINTOCK. A new definition of the word, as far as I can tell.

Mr. JUSTICE. The only thing I have ever volunteered for is when someone asked me if I wanted to do it and I said yes.

Mr. MCCLINTOCK. We just heard testimony that this designation would enhance recreational opportunities by giving the river a little special recognition, that is all. What is not to like about that?

Mr. JUSTICE. Well, there was a letter posted on the Department of the Interior's Web site by a lady named Debbie Doss, the Conservation Chair of Arkansas Conservation Coalition. She said this was like winning a beauty contest. Well, in a beauty contest, don't you first decide to enter; second, prepare for it; and third, want to be judged?

Mr. MCCLINTOCK. But if it is simply a matter of putting pretty signs up saying that this is a National Blueways river, what is wrong with that?

Judge GRIFFIN. Let me point out the wording, Mr. Chairman, of "limiting human encroachment into the flood plain." That does not seem to be very recreational-minded.

Mr. MCCLINTOCK. Limiting human encroachment into the flood plain, well, that would include things like, what, river rafting and fishing and probably all the stuff that Mr. Bacon's folks do. What, exactly, do you do over there in your neck of the woods?

Mr. BACON. Fly fishing, rafting, kayaking.

Mr. MCCLINTOCK. Well——

Mr. BACON. Yes, sir.

Mr. MCCLINTOCK. Don't you realize you are encroaching on the flood plain in the river?

Mr. BACON. Yes.

Mr. MCCLINTOCK. And it doesn't bother you that the Federal Government is producing a designation that could well end up banning your activities?

Mr. BACON. I think one key difference in our circumstance, Mr. Chairman, than the other members of the panel is that we operate almost predominantly on Federal land. We do not have the same kind of private land issues—

Mr. MCCLINTOCK. Let me warn you about the commercial operators that are doing business in the Yosemite Valley and have for nearly 100 years. River rafting rentals, bicycle rentals, horseback riding rentals, the National Park Service is now seeking to remove all of those enterprises from the Yosemite Valley floor.

And, by the way, the reason that is often stated in meetings is because these are commercial enterprises and commercial enterprises are incompatible with the public lands. In fact, they go to great lengths to assure us that bicycle riding and horseback riding will still be allowed, it just cannot be commercially provided on the Valley floor. Wouldn't a similar policy affect your operation?

Mr. BACON. It would.

Mr. MCCLINTOCK. Well, what do you think of that sentiment, that commercial enterprises are incompatible with our public lands?

Mr. BACON. I will not contest that there are case-by-case challenges throughout the country and around the United States where public recreation and commercial outfitting is challenged by our land management agencies.

Mr. MCCLINTOCK. Well, I think that you will find you are taking a giant step in that direction and running athwart of a warning often given by Ronald Reagan, which was if you get in bed with the Federal Government, you better expect something more than a good night's sleep.

Mr. BACON. Point taken.

Mr. MCCLINTOCK. Judge Griffin, your testimony talked about how the White River Blueways Commission documents targeted three hydroelectric dams owned by the city of Batesville, Arkansas, because they reduced fish passage. Could you tell me very briefly about those dams and what the outcome could have been under the White River Blueway?

Judge GRIFFIN. Each of those create a pool of water, probably 6 to 8 feet deep. They increase the fishing area and enhance that. But also, the critical thing is actually irrigation water and water for the substance of people, 25,000 people, that are in that area that depend on that pool of water for drinking water.

Mr. MCCLINTOCK. Thank you. Ranking Member Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. Mr. Bacon, your experience as an outfitter and a taxpayer, do you think it makes sense for the variety of Federal agencies who are engaged in management of our Nation's water resources to better coordinate their efforts to support local initiatives and to maximize efficiency?

Mr. BACON. I would say of course. I think coordination is our single biggest opportunity when dealing with multiple Federal agencies. I would say, most importantly there needs to be a cultural change within our agencies to become—specifically we deal with the Forest Service almost predominantly, to really put the Forest

Service in the recreation business and acknowledge that recreation is a fundamental component to its mission delivery.

So, coordination, yes. I agree with that statement. We have to make sure that our agencies are in the recreation business, and that we do everything on a line-coordinated approach. Ultimately, private business, private enterprise using our public lands is what is creating the jobs, the economic impact that we have talked about. So our land agencies need to facilitate that.

Mrs. NAPOLITANO. Thank you. Well, nominations for the Blueways are submitted by localities to the Department of the Interior. Is that correct?

Mr. BACON. That is my understanding.

Mrs. NAPOLITANO. So maybe DOI didn't totally reach out to every single aspect of those that should have been involved, and shame on them if they didn't.

Mr. BACON. It seems to me, without knowing a lot of the details, that there are process issues that the Department of the Interior needs to address.

Mrs. NAPOLITANO. Well, hopefully this new Secretary will take care of that.

In your testimony, sir, you state 80 percent of the county is federally owned and managed. That is really on par with most of our counties in the West. But in your experience, it is a given that in a county with substantial Federal land ownership, the economy does not have to suffer. Is that correct?

Mr. BACON. Yes, ma'am. That is correct. We have numerous examples in the Southeastern United States, where we operate. We almost have exclusively all Federal lands and create millions of dollars of economic impact. Gatlinburg, Tennessee, for example, is a 10-square-mile island in the middle of a Great Smokey Mountains National Park, and it generates \$500 million of direct consumer spending, leveraging the national park.

Mrs. NAPOLITANO. So then it behooves both areas, not only the Federal Government, but also entities that know that this might happen, to not interfere, but rather inject into the conversation things that they feel are important.

Mr. BACON. Absolutely.

Mrs. NAPOLITANO. Are there ways the working collaborative with stakeholders, local, the State, the Federal, and, don't forget, the partners, as you say, in business, people like you, that a community can thrive, even when the Federal taxpayers own substantial amounts of land in those areas?

Mr. BACON. I think the key is alignment within stakeholders. Whereas, many different business interests—local interests, government interests, landowner interests—can sometimes be in conflict, here in western North Carolina we find common ground on rallying around the travel and tourism industry, specifically throughout recreation component of the travel and tourism industry. The rising tide truly does lift all boats.

Mrs. NAPOLITANO. And, of course, they also value the protection of those rivers to ensure their health, and also of the watersheds, because it is important to them and to the ag areas.

Mr. BACON. Absolutely. If it weren't for the protection of our watersheds, the enhancement of recreation areas, and the protection

of our natural resources, our guests would not recreate and come to the mountains to enjoy all of these wonderful businesses that offer services there. Yes, ma'am.

Mrs. NAPOLITANO. Which is a job creator. Mr. Justice, can you give me an exact instance of a new regulation that would have been created due to the Blueway designation?

Mr. JUSTICE. No, ma'am, I can't, because that has not been defined yet. But the parallel that I made between that and the Ozark National Scenic Riverway, I think, is a good indication of what could possibly happen.

Mrs. NAPOLITANO. Could possibly happen.

Mr. JUSTICE. Yes, ma'am, due to precedent. There have been some ideas that some of the regulation of the Blueway is to keep our cattle 180 feet away from the river. That completely destroys our cattle industry. If you look at the Ozark National Scenic Riverways to where the conservation department has put boulders in front of some of the boating access points, and they have made regulations to where you can't ride horses in the water, completely opposite of the way that our rivers should be managed.

Mrs. NAPOLITANO. Well, there are some concerns about contamination of river waters, including some of the—I would say manure in other river run-off from agriculture. So we need to ensure that we protect those rivers for the health of not only the business entities, but also the communities that use it for drinking water.

And, Mr. Chair, I reserve any balance of my time for later. Thank you.

Mr. MCCLINTOCK. We will credit you with three seconds. Mrs. Lummis?

Mrs. LUMMIS. Thank you, Mr. Chairman. Ms. Budd-Falen, thank you and welcome. Thank you for coming. The order that designated this Blueway designation says that nomination of a river may be done by any established stakeholder partnership. But it does not define this term. Do you think that might allow a far-removed, non-governmental special interest to nominate a river, regardless of local concern or opposition?

Ms. BUDD-FALEN. Oh, I absolutely think that, because the order doesn't require any kind of public input, it does not require the agreement of the States. Specifically, it does not include any requirement of local government knowledge. A stakeholder could be somebody from New York City nominating the Yellowstone River in Wyoming. And that would clearly not be right for the people in Wyoming.

Mrs. LUMMIS. Now, in your testimony you mentioned that local governments already have comprehensive land and water conservation plans. So, my question is, what would happen to this local planning under the Blueways implementation if the Federal goal conflicts with local conservation plans?

Ms. BUDD-FALEN. The way the Blueways order is written right now is that the local plan would be subservient and would probably vanish. In Wyoming, conservation districts write these local land use plans based on State statute with absolute input of all of the people in that local area. And it is these people that are going to really understand that watershed. Because, clearly, a watershed in

northeast Wyoming is not the same as a watershed in southwest Wyoming.

And so, what you are going to have with these kind of Federal designations is all of these locally carefully crafted on-the-ground plans are going to be diminished because you have a Federal Government, top-down, one-size-fits-all from Washington that has not worked well for the West in the past, and I can't believe it will in the future.

Mrs. LUMMIS. Ms. Budd-Falen, also in your testimony you suggest that the non-regulatory Blueway designation can be the basis for lawsuits. Can you explain that further?

Ms. BUDD-FALEN. Yes, I can. As this congressional body knows, I have been heavily involved in looking at lawsuits from radical environmental groups. Most of these lawsuits involve challenges to Federal land use plans. They don't challenge the land use plan or the Federal designation on the merits. They challenge through some procedural process. And we have even had testimony and information by these radical groups saying that they are only doing this to wear down Federal land managers so they simply do what these groups want.

These kind of designations harm hundreds of people who are trying to make a living on the land. We have to intervene in this litigation. We have done studies based on grazing litigation, where the permittees have to intervene in these groups with the Federal agencies. It can cost anywhere between \$35,000 and \$100,000 for a grazing permittee to try to intervene in litigation by an environmental group. And, as you know, these environmental groups get their funding paid back, in terms of attorneys fees, from the Federal Government. And I can guarantee you that will happen with this designation, as it has with every single other either congressional designation or national monument designation or other agency designation.

Mrs. LUMMIS. So, even though the Blueways Secretarial Order is just that, a secretarial order, is there still a threat of lawsuit and litigation? And does it constitute a regulatory burden?

Ms. BUDD-FALEN. It absolutely is a threat of litigation because if you have a group that does not believe that the Blueway is being managed in terms of how the Department of the Interior designated it, because they believe that Interior ought to consider more environmental protection or different kinds of recreation, there will be Federal court litigation. There is simply no reason to not litigate by these groups. And that will absolutely harm the individuals, including the recreationists, who are relying on that permit, or that lease, or that ability to use that land. It is absolutely a regulatory burden to have to defend the Federal Government, just to get your lease or permit from the Federal Government.

Mrs. LUMMIS. Thank you. A quick question for Judge Griffin. The stakeholder partnership that nominated the White River, was it being driven more by Federal officials or local officials?

Judge GRIFFIN. It was driven entirely by Federal officials, in concert with programs that were going on with the local people.

Mr. Chairman, could you indulge me one moment to address the Ranking Member's question?

Mr. MCCLINTOCK. Unfortunately, the gentlelady's time has expired, but we may get to that in a future question.

Mr. Huffman for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chair. We have heard a lot today about how this program might lead to certain things, might be interpreted certain ways, could have certain effects that could lead to other effects. And I would like to try to dial this back in to what has actually occurred thus far in the real world.

We have heard a question about potentially far-removed NGO's and special interests could sort of parachute in and propose designation of Blueways. Can any of the witnesses tell me about a situation where that has actually happened, where far-removed special interests have come into a watershed and actually proposed a designation that was accepted by the Department of the Interior? Can anyone identify an example of that?

[No response.]

Mr. HUFFMAN. How about the suggestion that this Blueways designation could somehow preempt local plans and authorities? Could anyone tell me an example of where this Blueway designation has been proposed, and that has had some sort of preemptive effect that invalidated or trumped local plans and local authorities?

[No response.]

Mr. HUFFMAN. How about any regulatory effect at all? Can anyone identify any regulatory power that the Blueway designation actually creates for any Federal agency. Anything?

Judge GRIFFIN. I—

Mr. HUFFMAN. Any specific—yes.

Judge GRIFFIN. I would like to address that one. And I believe you are an attorney by trade, Mr. Huffman?

Mr. HUFFMAN. Yes, I am guilty of that, yes.

Judge GRIFFIN. The thing that I see is when the Secretary of the Interior, in section 3—

Mr. HUFFMAN. But, sir, I want to just ask, with all due respect, a specific answer to my question, which is can you identify any specific regulatory power that Blueways designation creates for—

Judge GRIFFIN. Section three. It implies there are broad powers existing to create the—

Mr. HUFFMAN. Implies. Does it create any new authority?

Judge GRIFFIN. Not that I am aware.

Mr. HUFFMAN. Thank you. What about property rights? There has been a suggestion that this could devalue or encroach upon or violate property rights. Is anyone familiar with a situation where a Blueways designation has harmed anyone's property rights?

[No response.]

Mr. HUFFMAN. How about water rights? Anyone lost any water as a result of the Blueways designation?

[No response.]

Mr. HUFFMAN. Anyone been denied the ability to build something because it was alleged to encroach on the flood plain? Anything like that?

[No response.]

Mr. HUFFMAN. What about recreation? Has anyone been prevented from recreating because of a Blueways designation or proposed Blueways designation?

[No response.]

Mr. HUFFMAN. I am not hearing that. There was a suggestion that cattle might be kept 180 feet back if there was a Blueways designation. Has anyone ever been told they have to manage their cattle differently because a Blueways designation was proposed?

[No response.]

Mr. HUFFMAN. Any specifics?

[No response.]

Mr. HUFFMAN. Any other type of access to a river or a watershed that has been affected in any way by the consideration or the actual designation of a Blueways?

[No response.]

Mr. HUFFMAN. Well, it is kind of interesting that we have had what is an entirely hypothetical discussion here today about a program that, frankly, has been paused, even though it has not had any of the effects that folks have raised as concerns, but has, nevertheless, been paused so that there can be even extra consideration given to make sure that it is compatible with all the different stakeholders in these watersheds. But I think there is some perspective and context that we really need to bring to this discussion that has been missing from a lot of the testimony that we have heard.

I just have one more question in the time that has been allowed from the gentlelady from Wyoming. You mentioned several times radical environmental groups. Can you identify an environmental group for me that is not radical, or does that just automatically get joined in to the name, there? If you are an environmental group are you radical, or is there someone out there in the environmental community that maybe is not radical?

Ms. BUDD-FALEN. Actually, I can. If you look at local conservation groups, at groups that are environmental groups that are local in a small area and dealing with issues on the ground in that particular area, I do not believe that those groups are radical. The groups that I am talking about are groups that are national groups that, when you look at their Web site, that they have an agenda to drive livestock grazing, timbering, mining, and recreation off the Federal lands. And I can actually give you a list of those, if you would like them.

Mr. HUFFMAN. I would love to hear the ones that you would have at least more trust and confidence in that you would regard as non-radical.

But, in any event, I just have a few seconds left. Let me reiterate that in California we have been working for decades to get people out of their bunkers working together to avoid heavy-handed regulation through these collaborative efforts. I think it is a good thing, and I would like to see that program brought to our State. I yield back. Thank you, Mr. Chair.

Mr. MCCLINTOCK. Mr. Tipton of Colorado.

Mr. TIPTON. Thank you, Mr. Chairman. I would like to be able to enter into the record a letter from the National Cattleman's Beef Association opposing a Blueways designation.

Mr. MCCLINTOCK. Without objection.

Mr. TIPTON. For many of the reasons that have been cited for concerns that my good friend and colleague out of California cited,

they are concerned, concerned about the heavy hand of the Federal Government coming in. Not through this Congress, not through talking to you or talking to me, or any other member of this committee, but by executive fiat making these designations. And maybe we can help find a few answers to a couple of the questions that you did pose.

When we look at the White River designation, it is in the incorporating document for the proposed designation under the Blueway system to be able to have a 180-foot buffer zone on private property. Judge, would you call that a taking?

Judge GRIFFIN. That would be a taking, yes.

Mr. TIPTON. Ms. Budd-Falen, would you call that a taking?

Ms. BUDD-FALEN. Yes, sir, I would.

Mr. TIPTON. Mr. Justice, is that a taking?

Mr. JUSTICE. Beyond a shadow of a doubt.

Mr. TIPTON. Mr. Bacon, would you consider that a taking?

Mr. BACON. I am not familiar with it.

Mr. TIPTON. OK. So the Federal Government, by executive fiat, would set themselves up in a position to be able to come in and designate 180 foot on either side of a river, to be able to tell you what to do with the property. That is a genuine threat. That is an actual taking and an impact that is going to have a real impact on a lot of our farmers and ranchers. Fortunately, the White River was withdrawn from consideration as a Blueways, because the public, the people who actually live there, stood up and said, "We don't want this."

You have already testified that no locals were actually incorporated into the discussion. But we are talking about some of the outside groups that were maybe coming in and helping to push for a designation. Let's look at the White River, the National Wildlife Refuge Association, the Nature Conservancy District, Ducks Unlimited, some good groups. Not arguing that these are bad groups. But not all of them are invested in those areas.

In the West, Ms. Budd-Falen, in the West is water a private property right?

Ms. BUDD-FALEN. Yes, sir, it is.

Mr. TIPTON. Do you have State laws in Wyoming?

Ms. BUDD-FALEN. Yes.

Mr. TIPTON. Do you have priority-based systems in Wyoming?

Ms. BUDD-FALEN. Yes, we do.

Mr. TIPTON. Do you think it is appropriate for the Federal Government to be able to come in and start upsetting not only State law priority systems, but effectively taking private property rights through designation?

Ms. BUDD-FALEN. No, I do not.

Mr. TIPTON. You see any solutions? Do you have any comments on that, Judge?

Judge GRIFFIN. I am sorry, Representative Tipton.

Mr. TIPTON. Do you have some comments? Do you think it is the appropriate place for the Federal Government to be coming in and upsetting State law, priority-based systems and private property rights in regards to water?

Judge GRIFFIN. Absolutely not, not when 80 percent of the people that own land do not wish to participate.

Mr. TIPTON. Do you see a problem—and is this an arrogance typically out of this administration, assuming that everything is community property, and that they have a right on high in Washington, DC to come down into Arkansas and to Wyoming, to be able to go out through our States and to be able to make designations without passing a bill through the Congress?

Judge GRIFFIN. I think that any designation should have its origin only in Congress. And, thereupon, having vetting in the proper legislative process.

Mr. TIPTON. Maybe we can run through a couple of questions here real quick, if you wouldn't mind. We are a little short on time.

Under the Secretarial Order creating the Blueways program, can any entity nominate? You guys have lived it.

Ms. BUDD-FALEN. Yes.

Mr. TIPTON. Yes?

Ms. BUDD-FALEN. Yes. Any entity can nominate a national Blueway.

Mr. TIPTON. Mr. Bacon?

Mr. BACON. I believe so.

Mr. TIPTON. Mr. Justice?

Mr. JUSTICE. That is what I believe it says.

Mr. TIPTON. Judge?

Judge GRIFFIN. I believe so.

Mr. TIPTON. OK. Can that entity be a non-governmental entity outside the base and not accountable to the State or local governments? We just talked about that. Is that accurate?

Ms. BUDD-FALEN. That is accurate.

Mr. TIPTON. No arguments back on that. Can the National Blueway Committee composed entirely of Federal bureaucrats designate a Blueway once it has been nominated through what appears to be a flawed process?

Ms. BUDD-FALEN. Yes. There are no State or local participants at all on that national committee.

Mr. TIPTON. Any other comments on that?

[No response.]

Mr. TIPTON. Great. So, Federal bureaucrats will be the ultimate decisionmakers on tri-state areas like the 44 million-acre Yellowstone River watershed, even though landowners, local and State governments that manage the land as well are going to be excluded.

Ms. BUDD-FALEN. That is correct.

Mr. TIPTON. So the Federal Government will come in and do this.

Well, interestingly enough, we just had a meeting earlier today with Secretary Jewell with the Department of the Interior. She noted that they were having a pause on the Blueways program, a pause on the Blueways program because it is obviously fundamentally flawed. They are going to be looking back to be able to examine this. I would certainly like to encourage you and encourage this Congress to stand up for State rights, for the priority-based systems, and the water law and private property rights of the American citizen, and not let this happen by executive fiat.

With that, I yield back.

Mr. MCCLINTOCK. The Chair recognizes Mr. Gosar of Arizona.

Dr. GOSAR. Well, thank you, Mr. Chairman, and thanks for this hearing.

What I am very disappointed in is the administration couldn't be bothered to provide a witness today. I think we have given plenty of testimony from both sides that we needed to have somebody from the Interior to actually talk about the implementation of the National Blueways program.

In my district, Rebecca Wodder has been traveling the country basically selling folks in our district a false bill of goods and promising Federal dollars in exchange for the Blueways designation. That is exactly what occurred in my State. Some well-intentioned local officials in my district, looking for any way to get resources to preserve the ecologically important Verde River, have expressed interest in the program after hearing Wodder's promises. I am committed to working with those folks on issues pertaining to the Verde River, but I am specifically concerned about the Blueways designation that would bring the potential burdens that it would impose on the resource management in exchange for this funding priority at Interior.

Ultimately, the Department must come to Congress to authorize, as many of these guests have said. And these types of overarching land and water management decisions are very, very important.

Ms. BUDD-FALEN, I mean, trust is a series of promises kept, right? Is that a good definition?

Ms. BUDD-FALEN. Not when you are dealing with the Federal Government, sir.

Dr. GOSAR. I am loving that conversation now. So tell me what the Federal Government has actually done to uphold our trust in the Western States? I grew up in Pinedale, by the way.

Ms. BUDD-FALEN. Oh.

Dr. GOSAR. I am one of those Gosars.

Ms. BUDD-FALEN. Oh, cool.

Dr. GOSAR. Yes, yes.

[Laughter.]

Ms. BUDD-FALEN. The Federal Government, for example, promised that livestock grazing would not be affected on the Grand Staircase-Escalante National Monument. There are now very few livestock grazing permits on the Grand Staircase-Escalante, even though the proclamation specifically protected livestock grazing. But because the bureaucracy of simply trying to renew permits and bring permits together, and through a series of litigation by environmental groups, those permits have been eliminated, costing those local governments hundreds of thousands of dollars that recreation, even in that beautiful area, is never going to replace.

Dr. GOSAR. We haven't even started talking about the Endangered Species Act, have we?

Ms. BUDD-FALEN. No, sir, we have not.

Dr. GOSAR. That would have been a great one, folks, to pick up over there, because that is implied everywhere. I mean that has been an implication on the Federal lands, period, all the way across the board. And it has had a disastrous effect on economies, private land ownership, and everything else.

How do you see this, in this specific adjunct, and the way you put things together, Ms. Budd-Falen, when you see waters of the

United States and the designation of the blue waters particularly, how do you see those conceived basically over-arching and taking jurisdiction from private and State, local jurisdictions?

Ms. BUDD-FALEN. The problem is it happens very subtly. This is not something that they designate and all of a sudden uses are stopped. It is something that happens over a period of years, as bureaucrats gain more power over the people, particularly in the West.

I think we understand it better, because we live with Federal bureaucracies granting everything that we do, whether it is a term grazing permit or an oil and gas lease, or whatever is keeping these rural communities alive. And so we understand what it is like to have the bureaucracy, time after time, be on top of you.

In the West now we are dealing not only with this, but with sage grouse issues, and what happens if the sage grouse gets listed. I did listen to Secretary Jewell's testimony this morning, and she talked about how she appreciated the partnerships on sage grouse. What she forgot to mention is the sage grouse is also in litigation in front of Judge Windmill in Idaho by Western Watersheds. And so, all of these partnerships and no matter how good the Department of the Interior thinks the State programs are going, it is not going to be Interior that decides it. It is a Federal district judge—in this case, in Idaho—because that is where the case is.

So it is not so much whether Congress thinks this is a good idea or a bad idea. When the agencies make these designations, what happens is that they take on a life of their own. They totally overtake the rural communities, and then they get litigated in Federal court by somebody we can't fire, and by somebody who gets to dictate how we live.

Dr. GOSAR. So do you have the ability to have a personal one-on-one discussion with the Secretary of the Interior? Would you ever be getting that opportunity?

Ms. BUDD-FALEN. I would love that opportunity.

Dr. GOSAR. That would be nice. You won't get it. The environmental groups get it.

But I also want to finish up. I have worked with the Nature Conservancy in the State of Arizona. They have actually come to the table with solutions. No isn't an answer any more. But the Center for Biological Diversity believes that they ought to have poets and philosophers, instead of science people. And that is some of the things that we want to talk about. And I am happy to verse anybody on the opposite side about when we talk about aggressive NGO's. Thank you.

Mr. MCCLINTOCK. The gentleman from Missouri, Mr. Smith.

Mr. SMITH. Sure. Thank you, Mr. Chairman. Let me ask Mr. Justice. You testified earlier in regards to the Blueways designation on the White River area. Were there any public meetings in Missouri that you are aware of?

Mr. JUSTICE. I am not aware of a single meeting held anywhere in the State of Missouri affected by the Blueway.

Mr. SMITH. So, would it be your belief that it wasn't a voluntary program for the 14 counties in Missouri?

Mr. JUSTICE. It absolutely was not.

Mr. SMITH. What is your definition of local stakeholders?

Mr. JUSTICE. Local stakeholders are local governments and local grassroots organizations and land owners that actually have invested their livelihood in making these areas succeed on an economic and a personal level.

Mr. SMITH. Believe it or not, that is what the Secretary of the Interior says, that is why the White River Blueway was created, is because of local stakeholders. Yet there was no open public meetings in the 14 counties in Missouri. And there were not any local county commissions, of those 14 counties, that were in support. In fact, they are all opposed to it.

Mr. JUSTICE. Right.

Mr. SMITH. Does that sound like local stakeholders to you?

Mr. JUSTICE. Absolutely not.

Mr. SMITH. I think the concern that the individuals—and let me know with several of the witnesses there—you are worried about Federal Government implementing any kind of program with open guidelines. Wouldn't that be safe to say?

Mr. JUSTICE. Federal Government without restriction is dangerous.

Mr. SMITH. Absolutely. We have limited powers. Is that correct?

Mr. JUSTICE. That is absolutely right.

Mr. SMITH. And they are defined by the Constitution. I don't see anywhere in the Constitution where it says that we should create a Blueway in the White River basin. Do you, Mr. Justice?

Mr. JUSTICE. I sure haven't found it, and I have actually read it.

Mr. SMITH. I don't. And I spoke with the Secretary of the Interior just a couple hours ago, I asked her about this program. And they have paused it, like we have mentioned, because they need to get to know more about the program. I have been on the job 42 days. I am learning this program pretty good. She has been on the job for 3 months. She has been there a little bit longer. So I think that she should know the program a whole lot better.

But what scares me is that the lead person that she said is Ms. Rebecca Wodder. And she is almost like Lois Lerner, refusing to come testify. I would really love for the Obama administration to be more open and more transparent. And this is why the people in my district are scared to death when the Federal Government is trying to come in and implement a new designation with open guidelines and not knowing how it is going to affect our property rights and our constitutional rights.

So, I want to thank you all for being here again today.

Mr. MCCLINTOCK. Thank you. We have had a request for an additional round of questions. So let me begin by addressing the line of questioning that my colleague from California, Mr. Huffman, raised. And that is there doesn't seem to be any harm or any foul here.

Now, first of all, why don't you address that, if you would like?

Judge GRIFFIN. The problem is when section 3 says that these agencies have the current law available to make the goals happen and 180-foot buffers among all surface waters in the designation, which would include ponds, would include lakes, tributaries, to it, it implies that power exists currently. And I am telling you it does not in any of my experience, and I have a farm background. I have cattle. I have row crop.

We have a 40-foot buffer of Bermuda grass on the Black River to help decrease erosion. That was a voluntary program we did. We didn't participate with the government or anybody.

So, even though it has not happened, the order itself implies—and, in fact, states explicitly—they have a panoply of ability to do these things, including withdrawing 30 percent of agricultural acres that are eligible to be put into conservation programs.

Mr. MCCLINTOCK. And this is all explicit in the order.

Judge GRIFFIN. Correct.

Mr. MCCLINTOCK. Now, the order, so far, has only been applied to two rivers, one in Connecticut and then the White River that was later withdrawn. So they really haven't had an opportunity yet to apply the explicit provisions of the order that are clear to anyone who cares to read them. Is that correct?

Judge GRIFFIN. Correct, Mr. Chairman. Thank you for bringing that back.

Mr. MCCLINTOCK. It reminds me of something that Abraham Lincoln said in his famous house divided speech. You know, he said, "We have to look not only at the law, but also the machinery that the law embodies," how it could be used. He says, "Let anyone who doubts carefully contemplate that now almost complete legal combination," piece of machinery, so to speak, "compounded by the Nebraska Doctrine, the Dred Scott decision, let him consider not only what work the machinery is adapted to do, and how well adapted, but also let him study the history of its construction and trace, if he can—or, rather, fail, if he can, to trace the evidence of design and concert of action among its chief architects from the beginning."

As you look at this machinery that has been constructed, and the history of its construction, and who will be wielding it, and what their policies have been, what do you conclude from this Blueways order?

Judge GRIFFIN. I conclude they intend to comply with what its intent is, which is to reduce the acres, increase 180-foot buffer zones, and within what they believe are current sections of law able to do that.

Mr. MCCLINTOCK. And apparently there are some Members of Congress who are quite content to allow that machinery to be brought into action with the wanton destruction of an untold number of jobs and with enormous damage to local economies before Congress does anything about it, and with the clear view, as has been stated to this subcommittee, that power is exclusively granted to the Congress, not to the Secretary of the Interior.

Judge GRIFFIN. I believe that, yes.

Mr. MCCLINTOCK. I will yield back the balance of my time. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman, for allowing a second round.

There is a question. I guess the Blue River designation included the White River, which apparently they have withdrawn. It has been withdrawn. And the fact that the Secretary is pausing the whole program is not necessarily because it is flawed. I believe that something needs to happen, whether it is because of the questions

brought forth by Congress or whether it is its impact on whoever is bringing up these issues.

There is only one designated National Blueway, and that is the Connecticut River. It encompasses the four States of Connecticut, Maine, New Hampshire, and Vermont. And it serves about 4 million people who live along the river, even going through Springfield, the second largest city in Maine.

Mr. Bacon, do you believe these citizens do not care about their private property rights? And have there been instances of land taking or water taking from the Connecticut River?

Mr. BACON. I believe they do care about their rights, and I am not aware of any issues.

Mrs. NAPOLITANO. You have kind of hit upon some of the benefits that have been very evident with the businesses, creating the jobs and creating economy in the area. Why do you think this is so important?

Mr. BACON. Why Blueways is important? Again, I think, crafted appropriately and applied appropriately to communities that want it, like our community, we would cherish this kind of designation because it recognizes the efforts that a diverse stakeholder group, inclusive of private business, local government, Native American reservation, public utility, all care about our rivers and waterways, and we want to see that kind of recognition program help brand the region and have some of the benefits that we have talked about, in terms of health and wellness, ecological integrity, recreational benefits, et cetera.

Mrs. NAPOLITANO. Were you consulted in regard to this designation at all?

Mr. BACON. No. This has been a completely bottom-up, local stakeholder-driven initiative.

Mrs. NAPOLITANO. So you feel that even though you were not involved, or your agencies or businesses were not involved, it is still beneficial.

Mr. BACON. Yes.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. MCCLINTOCK. Mrs. Lummis?

Mrs. LUMMIS. Thank you, Mr. Chairman. Regarding the statutory authority for the National Blueways program, Ms. Budd-Falen, you have looked at the statutes. Is there, first of all, any one existing statute standing alone that gives the Department of the Interior the authority to designate these Blueways?

Ms. BUDD-FALEN. No, I have not found a single statute.

Mrs. LUMMIS. And how then, have they justified creating this program?

Ms. BUDD-FALEN. They actually listed three statutes, and I quote "a panoply of other authorities," which I am not exactly sure what that means. And most importantly, they listed the America's Great Outdoors Initiative, which was also not created by statute, it was created by a Presidential Executive order through college listening sessions across the country. So that did not have full public input, either.

But they listed the Take Pride in America Act, which is basically a statute that encourages Americans to enjoy the natural resources and participate in recreation, but it doesn't govern anything.

They cited the Outdoor Recreation Act, which specifically discusses national wildlife refuges, national fish hatcheries, and other conservation areas currently administered by the Secretary of the Interior for wildlife purposes. So that is not statutory authority to create this huge Blueways that covers State and private land.

The third act that they cite is the Cooperative Watershed Management Program of the Omnibus Public Lands Management Act of 2009. Although that talks about creating watershed programs, it is only applicable to very specific bureaus within the Department of the Interior. And under those specific authorities, it is very specific as to what each bureau can do. It does not imply to the giant Department of the Interior to create a new program.

That is what they listed as their statutory authority in the order.

Mrs. LUMMIS. So, by cherry-picking or cobbling together these different statutes enacted by Congress in different contexts to create the basis for their legal authority, what kind of legal precedent is being set by the Blueways order?

Ms. BUDD-FALEN. Actually, I believe this is very dangerous precedent, because the Federal Government, as Congress knows, has very broad authorities that you have set.

But you also, in your statutes, told them the priorities for their authority. And if you now allow agency departments and agencies to start picking and choosing what they want to implement and why, and creating new programs out of whole cloth, if it starts with Blueways, it will clearly go into something else. There is simply—you are simply losing control of the bureaucracy, and you are an equal branch of government. You should be setting the programs and priorities, not some Federal agency that we cannot elect and we have no control over.

Mrs. LUMMIS. Thank you. Now, turning to Judge Griffin, in terms of Federal officials that were driving this thing in the White River area, how do you think they were able to convince some of the local governments in the watershed to support the Blueway?

Judge GRIFFIN. They were solicited in hopes of gaining additional Federal funding for projects that they were working cooperatively currently to achieve.

Mrs. LUMMIS. OK. So a Federal financial carrot was dangled in front of some of the folks that took a bite out of it, right?

Judge GRIFFIN. That is my understanding from what they told me.

Mrs. LUMMIS. And were other groups that are riparian to this watershed area consulted?

Judge GRIFFIN. None that I am aware of.

Mrs. LUMMIS. Now, here is a question for Mr. Bacon. I know you testified that in your case the process was a locally determined vision for a waterway. After listening to Judge Griffin and Mrs. Budd-Falen, would you call these processes, especially the one for the White River Blueway, a locally determined vision for a waterway?

Mr. BACON. Based on the testimony, I think there are opportunities for the Department of the Interior to improve its processes.

Mrs. LUMMIS. Do you think, though, that there were groups that should have been included that weren't?

Mr. BACON. It would seem so.

Mrs. LUMMIS. In your case, how did you all ensure that process would be inclusive of stakeholders that were riparian to the area?

Mr. BACON. Exclusive of the Blueways process, we have acknowledged and created a stakeholder group to grow the outdoor recreation economy——

Mrs. LUMMIS. Why exclusive? Why exclusive to the process?

Mr. BACON. I would say not exclusive, but independent of the process. We were going——

Mrs. LUMMIS. Yes, and why? Why independent?

Mr. BACON. We were doing it anyway. We think it is important.

Mrs. LUMMIS. You were doing it anyway?

Mr. BACON. Yes.

Mrs. LUMMIS. Thanks, Mr. Chairman. I yield back.

Mr. MCCLINTOCK. Mr. Tipton.

Mr. TIPTON. Thanks, Mr. Chairman. I just had a couple of questions. Ms. Budd-Falen, you made the comment in our previous series of questions when agencies make designations they take on a life of their own. And I believe you were just speaking to this again.

Do you have a deep concern if a Blueways program is allowed to be able to proceed, it doesn't stop there, we will see compounded rules, compounded regulations? And, if I understood you correctly, you have got a deep concern that a rule or a regulation which has the impact of law is going to expand far beyond the original intent?

Ms. BUDD-FALEN. I believe that is exactly the case. And I believe if you simply look back on the pattern of other designations, including designations like Wild and Scenic and Wilderness that are created by Congress, that those take on a life of their own, regardless of the sideboards that are put on it. They just take on a life of their own because of bureaucracies or because of Federal court litigation.

Mr. TIPTON. Judge, you have dealt with a lot of local issues. Have you seen that to be a tendency out of the Federal Government, that once a program is initiated it doesn't stop, it just expands and grows and has impacts on the local community?

Judge GRIFFIN. It seems to become a living, breathing entity of its own.

Mr. TIPTON. Mr. Justice, any comment?

Mr. JUSTICE. Well, I completely agree with that, that it does grow. But another thing that I would like to point out is that one of the things that the Blueway designation said—one of the reasons they were enacting this was because of the positive steps that local people were taking, and local groups were taking in conservation.

Well, that just shows that we were doing it already, because we were motivated to do it for ourselves. We weren't motivated to do it for some higher power of Federal Government. So we are taking care of it. We don't need this.

And I must disagree a little bit with Mr. Bacon when he said that this was a positive thing, we wanted the recognition, we wanted to be recognized for this. We don't. We want to be left alone.

Mr. TIPTON. Thank you. Thank you for that. And, Mr. Bacon, I am just interested a little bit maybe in your business. Do you have to have a permit?

Mr. BACON. We do.

Mr. TIPTON. For your permit?

Mr. BACON. Yes, sir.

Mr. TIPTON. Does the Government have the right to be able to rescind the permit?

Mr. BACON. Under some circumstances.

Mr. TIPTON. Some circumstances. And, Mr. Chairman, if I may, I would like to maybe broaden this discussion just a little bit from my end.

We not only have Blueways, but we also have the national forests as a conditional use of permit requiring ski areas in my part of the country and your part of the country, farmers, ranchers, who have paid for and developed water rights that are coming off the public lands, because in Colorado it all comes off of public lands. If they do not comply, they are going to have to sign over their water rights in order to be able to get that permit.

This is a control reach by the Federal Government, and I see the two series that are working in unison, actually: conditional use of permit followed up now by Blueways and you had brought up—and I believe we are going to be having some hearings and talking with Secretary Jewell, hopefully, in regards to the sage grouse—we are seeing the West being greatly challenged by the expansive and heavy hand of the Federal Government, and the impact that is going to have on our communities and the future of our ability to be able to raise our families, and for moms to be able to take care of those families. I don't think that we can overstate that.

So, Mr. Chairman, I applaud you for holding this hearing. And again, I would like to thank all of the panel for taking the time to come in and testify. I yield back.

Mr. McCLINTOCK. I thank you. I believe that concludes the committee's questions. I again want to thank the witnesses for their indulgence of the committee's schedule today. Mr. Bacon, I think, may have had to postpone a flight. Thank all of you for your service to the committee.

And the Chair would also like to thank our assistant committee clerk, Mr. Riely Weaver, for generously donating his free time to assist our—

Mrs. LUMMIS. Mr. Chair, is he in training?

[Laughter.]

Mr. McCLINTOCK. I think he is already trained, as a matter of fact.

At any rate, if there is no further business to come before the committee—and also, just a quick warning, you may get additional questions by the committee members. The committee record will be held open for 10 days to receive additional comments. And, with that, if there is no further business, this subcommittee stands adjourned.

[Whereupon, at 4:16 p.m., the subcommittee was adjourned.]

[Additional Material Submitted for the Record]

PREPARED STATEMENT OF THE U.S. DEPARTMENT OF THE INTERIOR

NATIONAL BLUEWAYS SYSTEM

Mr. Chairman and members of the subcommittee, thank you for the opportunity to provide the views of the Department of the Interior (Interior) on the National Blueways System.

Healthy rivers and watersheds are among America's most loved national treasures. These resources are vital to local economies, to enjoyment of the natural world, and to the quality of the environment on which we all depend. Healthy rivers and watersheds provide jobs and revenue for local communities, enhanced opportunities for outdoor recreation and tourism, reliable supplies of clean water, flood and drought protection, habitat and migration corridors for fish and game, and other valuable economic, social and ecological services. Across the country, local groups, communities, individuals, businesses, tribes, conservation districts and State and local governments have been working to protect their rivers and watersheds for their economic and ecological values.

ESTABLISHMENT

To recognize and support these locally led efforts to sustain the economic, recreational, and natural values of rivers and watersheds of national significance, then Secretary of the Interior Ken Salazar signed Secretarial Order #3321 on May 24, 2012, establishing the National Blueways System. The National Blueways System is intended to recognize and support exemplary river and watershed partnerships that request this recognition. These partnerships collaborate, cooperate, and promote nationally significant rivers and their watersheds that are highly valued as economic, recreational, social, and ecological assets by the communities that depend on them. National Blueways are locally envisioned and led by diverse stakeholder partnerships consisting of the communities, organizations, and agencies that have an interest in the welfare of their river, its watershed, its resources, and the public. National Blueways partnerships use a landscape-scale approach to river conservation that integrates land and water stewardship efforts within a working landscape from headwaters to mouth and across entire watersheds.

The National Blueways System is a voluntary program intended to highlight and support successful collaborative strategies for sustainable river and watershed resources led by diverse stakeholder communities and organizations. Inclusion in the National Blueways System recognizes and supports river system stewardship efforts that enhance abundant conservation, environmental education, recreation, and economic opportunities. This recognition program is intended to reward the work of stakeholder partnerships and provide Federal support to increase collaboration among diverse partners. A National Blueways System also will help coordinate Federal, State, tribal and local partners to promote best practices, share information and resources, and encourage active and collaborative stewardship of rivers and their watersheds across the country.

In these ways, the National Blueways program is intended to support conservation efforts and bolster valuable economic growth and job creation providing long-term value for the American people. The success of the stewardship of these rivers is an important component of the America's Great Outdoors initiative, which supports a community-driven conservation and recreation agenda for the 21st century.

The Secretarial Order was issued in accordance with authorities provided under the Take Pride in America Act, Public Law 101-628; the Outdoor Recreation Act, Public Law 87-714; and the Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009, Public Law 111-11. In addition, the agencies within Interior have a broad panoply of legal authority to carry out their respective missions that support enhancing river recreation, undertaking river restoration, and pursuing river protection initiatives to pass on healthy rivers to future generations.

The Secretarial Order directs Interior agencies to collaborate in supporting the National Blueways System to the extent permitted by law and consistent with their missions and resources. It also establishes an inter-agency committee (the National Blueways Committee) to provide leadership, support, and coordination to the program. The committee includes representatives of Interior and its agencies, including the Fish and Wildlife Service, the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, the National Park Service, and the U.S. Geological Survey, in addition to representatives of the Department of Agriculture (USDA) and the Army (Civil). In January 2013, Interior, USDA, and the Army (Civil Works) signed a Memorandum of Understanding demonstrating continued support by these agencies of the National Blueways System and, in particular, enhancement of river-oriented outdoor recreation and education, natural resource stewardship, and sustainable economic development at a watershed-scale.

RECOGNITION OF THE CONNECTICUT RIVER

Simultaneously with the issuance of the Secretarial Order, then Secretary Salazar recognized the long-standing, exemplary work of local stakeholders and, at their re-

quest, designated the Connecticut River and its watershed as the first National Blueway to serve as an inspiration and model for future designations. The 410 mile long Connecticut River and its 7.2 million-acre watershed covers parts of Connecticut, Massachusetts, New Hampshire, and Vermont, and its watershed includes the Silvio O. Conte National Fish and Wildlife Refuge, which contains sub-boreal forests, floodplains, a major migratory pathway, and a globally recognized wetland. The Connecticut River is also an important economic resource to the 2.4 million residents and 396 communities in the watershed. Annually, 1.4 million people enjoy the recreational opportunities presented by the watershed, including National Recreation Trails, scenic byways, Wild and Scenic Rivers, and National Natural Landmarks. These and other recreation opportunities contribute an estimated \$1.0 billion to local economies, according to the Trust for Public Land.

The Connecticut River National Blueway designation recognizes and supports over a half century of successful and expanding local and regional collaboration between local, State, and Federal Governments, organizations, landowners, and numerous other stakeholders. In response to an invitation from Secretary Salazar to identify top priority recreation and conservation projects for President Obama's America's Great Outdoors Initiative, the Governors of Connecticut, Massachusetts, New Hampshire and Vermont identified the Connecticut River and Valley, and sought ways to partner with Federal agencies on collaborative conservation in the Connecticut River watershed. The designation recognizes the efforts of more than 40 organizations and agencies working together for nearly a decade to shape and pursue a vision for a healthy Connecticut River and its watershed. Support for this recognition has been positive and sustained.

RECOGNITION OF THE WHITE RIVER WATERSHED

The nomination for the White River Watershed to be recognized as a National Blueway was made on August 24, 2012, by a diverse, locally led watershed partnership which included a wide array of State and local stakeholders involved with the White River and its watershed in Arkansas and Missouri. The National Blueways Committee found that the White River Watershed met the criteria for National Blueway recognition, and on January 8, 2013, then Secretary Salazar added the White River Watershed in Arkansas and Missouri to the National Blueways System.

The proponents of this nomination hoped that designation would be a catalyst to promote connecting the conservation actions of the upper watershed in the highlands with the floodplain systems of the lower watershed, and would foster new partnerships, strengthen existing relationships, connect communities, engage stakeholders, and benefit the local economies. However, in letters dated June 28, 2013, and July 2, 2013, the State and local stakeholders involved with the nomination of the White River Watershed as a National Blueway requested that the designation be withdrawn.

Because the National Blueways program is a locally led program, on July 3, after receiving letters from these stakeholders, and with the concurring recommendation of the National Blueways Committee, Secretary of the Interior Sally Jewell withdrew the designation.

BENEFITS OF RECOGNITION

Recognition as a National Blueway for rivers and watersheds of national significance is intended to promote and conserve economic, recreational, and natural values of healthy river systems from source to outlet and across watersheds. The National Blueways program does not establish a new protective status or regulation of lands, either public or private, nor does it impose use limitations or other requirements. The Secretarial Order establishing the program was clear in stating its intent that the Blueways recognition does not authorize or affect the use of private property, nor be the basis for the exercise of any new regulatory authority. Instead, recognition as a National Blueway is a means of identifying the collaborative efforts of stakeholders and, by virtue of that recognition, encouraging support for existing local and regional conservation, recreation, and restoration efforts. Within Interior, it is also a means of coordination among our various bureaus with ongoing Federal, State, tribal and local activities.

The program is an example of a multi-agency/organization partnership addressing the full variety of seemingly unconnected activities necessary for successful landscape-scale conservation.

National Blueway recognition is intended to expand the opportunities for stakeholder organizations involved in a watershed-wide initiative, and to help make the Federal Government a more effective partner through enhanced communication, coordination and collaboration. This coordination is intended to improve ecosystem

services and, in the long term, increase the sustainability of natural resources and dependent local economies, providing a better quality of life for residents of the watershed.

The National Blueways program is entirely voluntary, and private landowners, local groups, local communities, businesses, State and local government agencies, are free to choose to not participate in any assistance programs or initiatives undertaken by the stakeholder partnership.

Such benefits are already starting to emerge from the Connecticut River designation including expanded participation of stakeholder groups and better coordination among the many groups that share similar programs and goals but may not have worked together given the size of the watershed. A Memorandum of Understanding between DOI, USDA and Army (Civil Works) was signed in September 2012, committing Federal agencies with land and water management responsibilities in the Connecticut River watershed to work together, consistent with each agency's priorities and legal authorities, to support the stakeholder partnership's efforts to enhance recreation, conservation, education and economic activities. An online river atlas is under development for use by stakeholders to share information with the public about Blueway-related activities and opportunities on the river.

CONCLUSION

Enjoying and protecting the Nation's lands and waters is an American value that crosses regional, demographic, and political lines. The voluntary partnerships fostered under this program encourage a broad range of stakeholders from Federal, State, tribal, and local governments to non-profit organizations, private landowners, and businesses to work together toward a vision of healthier rivers and watersheds that benefit the economy and conservation. The administration is committed to encouraging innovative partnerships in communities across the Nation, expanding access to rivers and trails, maintaining wildlife corridors, and promoting conservation while working to protect historic uses of the land including ranching, farming, and forestry. The National Blueways System supports and recognizes exemplary partnerships promoting a landscape-scale approach to river conservation within a working landscape. Interior is proud of these shared accomplishments, and looks forward to what can be achieved in the future through these partnerships.

